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THE
NEW CONVEYANCING ACT
AND
SOLICITORS' REMUNERATION ACT

UNDERHILL

2ND EDITION

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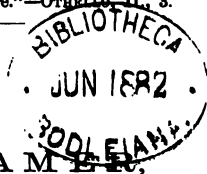
A
Concise Exposition
OF THE
NEW CONVEYANCING ACT
AND OF THE
SOLICITORS' REMUNERATION ACT:
With Practical Hints,
AND
AN APPENDIX CONTAINING THE ACTS.

SECOND EDITION.

BY
ARTHUR UNDERHILL, LL.D.,
OF LINCOLN'S INN, BARRISTER-AT-LAW,
Author of "A Concise Treatise on the Law of Trusts and Trustees,"
"A Summary of the Law of Torts," and "A Manual of Chancery Procedure,"
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1882.



PREFACE.



THIS little Treatise was originally delivered as a Lecture, before the Wolverhampton Law Students' Society, a fact which must be my excuse for adopting language more colloquial and less soporific in style than that generally adopted in Law Books. Of compendious treatises on the Act there are enough and to spare, but it seemed to me probable that a concise account of its provisions, with a few practical criticisms on them, would not be unwelcome to busy practitioners and to most students, and this surmise has proved to be correct, the First Edition having been sold in less than two months. I gladly take this opportunity of thanking my friend Mr. H. L. MANBY, M.A., of the Chancery Bar, for the valuable assistance which he has afforded me in the preparation of this new edition.

A. U.

1, OLD BUILDINGS, LINCOLN'S INN.

March 9th, 1882.

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A Concise Exposition
OF THE
NEW CONVEYANCING ACT:
AND
THE SOLICITORS' REMUNERATION ACT.
WITH PRACTICAL HINTS.

On the first of January, 1882, there came into operation a statute, which is, perhaps, the most important piece of property legislation since the passing of the act for the abolition of fines and recoveries. It is an act containing seventy-three sections, and many of these are subdivided into numerous sub-sections. It is, therefore, somewhat bulky in size, and, in addition to this, its language being based on the supposition that the reader is more or less familiar with the theory and practice of property law, it is not easily intelligible to a student.

I venture, therefore, to think that a concise outline of its provisions in plain English, together with a few hints as to how far it may be relied on with advantage, and how to avoid some serious but not unnatural errors in the use of it, may be instructive, even though it be a hopeless task to render the subject interesting.

The statute is intituled "An Act for simplifying and improving the practice of Conveyancing, and for vesting in Trustees, Mortgagees and others, various powers commonly conferred by provisions inserted in Settlements, Mortgages, Wills and other Instruments, and for amending in various particulars the Law of Property; and for other purposes." It is obvious, however, that in reality the simplification of conveyancing and the vesting of powers

in trustees and mortgagees, is in itself an amendment of the law of property, and therefore it seems to be a more logical division (at all events, for my present purpose) to consider the act under three heads; the first, treating of new obligations, rights or powers of a *primâ facie* nature, which will henceforth be taken to form part and parcel of certain documents, unless expressly controlled or excluded; the second, treating of new rights, duties and obligations which will *not* be taken to form part of documents, unless imported into them by the use of apt words; and the third, treating of certain alterations in the rules of law applicable to property, and to the rights therein of persons with limited interests, or whose powers of dealing with it are restricted by reason of some disability.

I. NEW OBLIGATIONS, RIGHTS OR POWERS TO BE PRIMÂ FACIE IMPLIED IN DOCUMENTS.

Implied Conditions of Sale. First, then, certain *primâ facie* rights are given to a vendor, which seem to reverse the old policy of the law; for, whereas the burden formerly lay on a vendor to prove that he was in a position to vest the property in the purchaser effectually, it will now lie, in great measure, on the purchaser to show that the vendor cannot do so. Indeed, it will in future be the safest course for a vendor to sell under an open contract, and a most dangerous thing for a purchaser to purchase under one, instead of being as now *vice versâ*. A purchaser can no longer say with Timon of Athens, "I'll trust to your conditions," for in addition to those expressly agreed to, he will have to face the stringent statutory conditions of which he probably never before heard. That these remarks are just, will, I think, be seen from the following digest of the rights conferred on vendors by the new act; to which for the sake of convenience I have joined those conferred by the Vendor and Purchaser Act, 1874. These rights, then, are shortly as follows:—

1. A vendor need only deduce a forty years' title (V. & P. Act, sect. 1), except on the sale of an advowson, where *100 years is still required*, and on the sale of a long lease,

or of tithes, or property granted by the crown, or of a reversion, in which cases the creation of the lease, tithe, property, or reversion will still have to be deduced. In such cases, however, the title subsequent to the creation of such lease, &c. need not be carried back more than forty years. (*Frend v. Buckley*, L. R., 5 Q. B. 213.)

2. On the sale of any property, the purchaser cannot demand the production or an abstract of any document dated prior to the statutory or the agreed root of title, even where such document creates a power exercised by the instrument which is the root of title or by any subsequent instrument; and any recital of any document dated prior to the root of title, must be taken to be an accurate and *complete* account of such document so far as is material, which must also be assumed to have been duly executed and perfected in every particular. This condition will not, however, prevent a purchaser from showing *aliunde* that the title is defective (sect. 3, sub-s. 3). And it has been held, that where a vendor himself accidentally disclosed a prior deed which showed a flaw in his title, the purchaser could take the objection. (*Smith v. Robinson*, 13 Ch. Div. 148.)

3. Statements in instruments, statutes or declarations twenty years old at the date of the contract, are to be accepted as *prima facie* evidence of their own truth. (V. & P. Act, sect. 2.) Indeed this rule may operate so as to exclude the right to even a forty years' title. Thus, a statement in a deed twenty years old, that A. was then seised in fee, has been held to be *prima facie* evidence of that fact, and therefore sufficient (in the absence of evidence to the contrary) to excuse any earlier title being shown. (*Bolton v. Lond. Sch. Bd.*, L. R., 7 Ch. Div. 766.) This being so, it is desirable, in drafting conveyances, to start with a recital that A. was seised in fee, because in twenty years such a deed will be a good root of title. But do not add the usual words "or *otherwise* well entitled," as that at once qualifies the statement of the seisin in law, and prevents the operation of the statutory condition. It would, however, perhaps be unwise to trust too implicitly to the above cited decision, because, though unappealed, it has been the subject of much criticism.

4. On the sale of enfranchised copyholds, the vendor need not deduce the title of the lord of the manor (sect. 3, sub-s. 2).

5. On the sale of leaseholds the vendor need only show the commencement of dealings with the lease or sub-lease which he has contracted to sell, and not the title either of his landlord, or of his landlord's landlord. (V. & P. Act, sect. 2, and Conv. Act, sect. 3, sub-s. 1.) It should be remembered, for the protection of unwary purchasers, that an assignee or lessee is still held to be affected with constructive notice of his assignor's or lessor's title, and that he will be bound by any restrictions imposed on his assignor or lessor, although they do not appear on any document abstracted. (See *Patman v. Harland*, 17 Ch. Div. 353, 359.)

6. On the sale of leaseholds, the purchaser must assume, *unless the contrary appears*, that the actual lease, and also any superior lease were duly granted, and the last receipt for rent is made *prima facie* evidence, that the covenants and conditions of the actual lease, and also of any superior lease, have been duly observed and performed up to the date of the completion of the purchase (sect. 3, sub-ss. 4 and 5). But if there have been continuing breaches for which a purchaser would be liable to be evicted immediately after his purchase, it is doubtful whether the Court would enforce specific performance of the contract. (*Lawrie v. Lees*, 14 Ch. Div. 149.)

7. On the sale of any property, the purchaser will have to bear the expenses of the production and furnishing of copies of all documents and certificates, whether the same are required for verification of the abstract, or for any other purpose, and of procuring information not in the vendor's possession. He will also have to bear the expense of attested copies of documents retained by the vendor (sect. 3, sub-s. 6). In case of a sale in lots, where the deeds are to be handed over to the largest purchaser, a case which the act does not appear to provide for, a condition should be inserted throwing these expenses on a purchaser.

8. On the sale of land (which would seem not to include incorporeal hereditaments), where the vendor retains any part of the estate to which the muniments relate, he is *entitled to retain them*. (V. & P. Act, sect. 2, sub-s. 5.)

9. The inability to furnish a purchaser with a legal covenant to produce muniments (*i.e.*, a covenant running with the land) cannot be objected to in case the purchaser will, on completion, have an equitable right to the production. As, however, no one seems to know what constitutes an equitable right to production, apart from a covenant, this rule is not of very great importance. (V. & P. Act, sect. 2; see Dart's V. & P. 5th ed. p. 143.)

10. On a sale of property in lots, the purchaser of two or more lots, held under the same title, is only entitled to one abstract, except at his own expense (sect. 3, sub-s. 7).

With regard to all these conditions, it is very important to bear in mind, that they are only to be construed as similar conditions would be if inserted in an agreement, and consequently will not be enforced against a purchaser in cases where such an agreement would not; for instance, where they are fraudulently misleading (sect. 3, sub-s. 11; *Re Bannister*, L. R., 12 Ch. Div. 131).

Notwithstanding this, however, some of the conditions are very strict, particularly 1, 2, 3 and 5. No doubt it is very usual to find such conditions expressly stipulated for by vendors in sales by auction; but if so, the purchaser has the fact brought to his notice, and enters into the contract with his eyes open: whereas, unless a lawyer, he will henceforth find that he has unconsciously risked perhaps thousands on what may turn out to be a perfectly worthless property. For it must be remembered that under the decision in *Clare v. Lamb* (L. R., 10 C. P. 334), a purchaser who is ejected has no remedy against a vendor, except for breach of the covenants for title, which are almost always limited to the acts and defaults of the purchaser and his ancestors. I think, therefore, that, although a solicitor is expressly protected by section 66 in not excluding such of these conditions as are implied under the Conveyancing Act (the protection does not seem to extend to those implied by the Vendor and Purchaser Act), he will best consult his own reputation, in calling the attention of his client to the new state of the law, before permitting him, as purchaser, to enter into any contract of importance.

Agreement for Lease. Another *prima facie* right conferred by the V. and P. Act and the Conveyancing Act, is, that under a contract to grant a lease, the proposed lessor is not bound to deduce a title to the freehold. (V. & P. Act, sect. 2.) If, however, he contracts to grant a sub-lease, he must deduce a title to the *term* for which he himself holds; but if he himself be a sub-lessee, he is not bound to show the title of his own landlord. (Conv. Act, sect. 13.) The marginal note of this section would seem to imply that the framers of the act meant it to apply to a sub-demise, but the wording of it clearly limits it to a sub-sub-demise. This will materially cut down the title which a mortgagee of such sub-lease can call for, when he is taking a mortgage by way of sub-demise. And see the remarks before made (on sect. 3, sub-s. 1) as to the liabilities of the lessee, and the case of *Patman v. Harland* there cited.

General Words in Conveyances. Let us now quit the subject of agreements, and come to the conveyance of land. Here the only new *prima facie* right conferred on a purchaser is, that very wide "general words" are to be implied in the conveyance; including, not only easements actually appurtenant, but easements which shall at the time of the conveyance be enjoyed with, or reputed as part of, the land, buildings or manor sold. It has, however, been doubted by one critic, whether these words would pass easements which have been extinguished by unity of possession, such as easements of way over contiguous lands of the grantor and the like. If, therefore, the grantor is the owner of adjoining lands, it will be well not to rely altogether upon the statutory general words. The words mines and minerals, too, are omitted from the general words applicable to the conveyance of land (sect. 6). These general words are not only applicable to conveyances properly so called, but also to mortgages, leases, settlements, covenants to surrender, and other assurances (sect. 2); and, with the exceptions above mentioned, will, in the words of Shakespeare, "conveniently the rest convey." The act *also implies a too sweeping* "all the estate" clause

(sect. 63), as, unless sub-s. 2 of that section be held to limit the operation of sub-s. 1 in case of a lease, it would seem that, in a lease or mortgage by sub-demise, which, by the terms of the interpretation clause, will be included in a "conveyance," the "all the estate" clause will be implied, which would be unusual and improper.

Mortgages. The powers and provisions which the act *primâ facie* imports into mortgages are very considerable; but these are not open to the objections which apply to implied provisions in agreements; because mortgages are invariably prepared by professional men, who may be presumed to understand what they are about in not excluding the operation of the act. These provisions will not apply to the case of a simple transfer after the commencement of the act of a mortgage executed before the act, where the mortgagor does not join to give new powers and covenants, or a new equity of redemption is not reserved.

It must be observed, that the powers and provisions as to mortgages in Lord Cranworth's Act are repealed, and that these powers and provisions are substituted for them. Such repeal, however, is not to affect the validity or invalidity, or any operation, effect, or consequence of, any instrument executed or made, or of anything done or suffered before the commencement of the act, &c. There has been considerable controversy as to whether these words are apt and sufficient to enable mortgagees who have relied on Lord Cranworth's Act to exercise the powers implied by that act after the repeal. But, though the wording is rather clumsy, the contention appears somewhat hypercritical. The old powers under Lord Cranworth's Act related to real property only, whereas the powers under the new act relate to all kinds of property. In future mortgages *by deed* then, there will (unless expressly excluded or varied (sect. 19, sub-ss. 2 and 3)) be implied the following powers and provisions:—

1. *Power of Sale.* First, there will be a power of sale by auction or private contract, with liberty to buy in or rescind a contract for sale (sect. 19), and by deed to convey

the property sold for the estate therein comprised in the mortgage, unless the property be copyhold, in which case all the usual formalities will have to be complied with (sect. 21, sub-s. 1). The title of the purchaser is not to be impeachable for irregularity in the sale (ib. sub-s. 2), and the power may be exercised by any person entitled to give a discharge for the purchase-money (ib. sub-s. 4). The money arising from any such sale, and also money arising from any securities comprised in the mortgage, is to be applied in the usual manner, first, in payment of the costs of sale, or of converting any securities comprised in the mortgage, then in discharging the principal and interest, and finally in payment of the residue to the person entitled to the equity of redemption (ib. sub-s. 3; sect. 22, sub-s. 2). It is apprehended, however, that this will not alter the character of the surplus as between the real and personal representatives of the mortgagor. The mortgagee's receipt is to be a good discharge, and he is not to be liable for involuntary losses (sect. 21, sub-s. 6). The power of sale is of course not to affect the mortgagee's right of foreclosure (ib. sub-s. 5). The power is not to be exercisable until default shall be made for three months after service of written notice requiring repayment, or until some interest shall be in arrear for two months, or unless some breach shall be committed by the mortgagor of some covenant in the mortgage, other than a covenant for payment of principal or interest (sect. 20). These powers are practically the same as are inserted in all well-drawn mortgage deeds, except that they are rather more stringent against the mortgagor: for usually the power to sell is exercisable *six* months after notice to repay principal, or *three* months after default in payment of interest, and the provision with reference to selling for breach of covenant (except in a mortgage of leaseholds) is not usually found at all. For these reasons it will, perhaps, be right in future, in drawing a mortgage, to rely upon, or at all events not to exclude, the operation of the act.

The act, however, seems to have greatly, and, in my humble opinion, very undesirably, limited the power of *sale in one respect*. Under Lord Cranworth's Act (sect. 15)

a mortgagee had power not only to sell the property for the estate comprised in and granted by the mortgage, but for all the estate which the mortgagor had power to dispose of. This power was very useful in cases of mortgage by sub-demise, enabling the mortgagee to sell not merely the sub-term, but also the original one. Henceforth this power will cease.

2. *Power to insure.* The new act empowers a mortgagee, at any time after the date of the mortgage, to insure the property; the premiums together with interest after the same rate as on the mortgage debt, to be a further charge on it (sect. 19, sub-s. 1). The amount for which the property is insurable under this power is (where not expressly agreed upon) limited to two-thirds of the amount required to reinstate it if totally destroyed (sect. 23, sub-s. 1). The power is, however, excluded from operation; 1st, where it is declared in the mortgage that no insurance is required; and 2ndly, where it is effected and kept up by the mortgagor under the deed, or (if not mentioned in the deed) where he voluntarily keeps it up to the maximum of the above limit (ib. sub-s. 2). All monies received from insurance may, at the option of the mortgagee, be applied either in reinstating the property, or in or towards discharging the mortgage money, except in cases where, by law or contract, the money has to be spent in reinstating the premises (ib. sub-ss. 3 and 4). These powers of insurance seem to be very wide and beneficial.

3. *Power to appoint Receiver.* When the mortgagee becomes entitled to exercise the power of sale, he may from time to time by writing appoint, and from time to time remove, a receiver of the income of the property (sects. 19 and 24). It would seem, however, that he can only appoint a receiver where he is entitled to exercise the *statutory power of sale*, and not where there is a special power of sale inserted in the mortgage deed (sect. 24); so that if the mortgagee wishes to take advantage of the receivership clauses, it would seem to be essential not to exclude the statutory power of sale. A receiver so appointed, is armed with powers to recover the income by action or otherwise, in the names of the mortgagor or mort-

gagee (sect. 24, sub-s. 3); and, subject to any agreement to the contrary, is to be deemed the agent of the mortgagor, who alone is to be responsible for his acts (ib. sub-s. 2); so that the mortgagee will not be responsible for the receiver's torts in collecting, or his breach of trust in misapplying, the income. Persons paying money to the receiver need not enquire whether the case has happened authorizing his appointment (ib. sub-s. 4). The receiver is also empowered, on the direction of the mortgagee, to insure the property (ib. sub-s. 7). The money received by him is to be applied, first, in discharge of outgoings, then to keep down prior charges, then in payment of his commission (fixed at 5 per cent. unless the appointment specifies a lower rate, or the Court sanctions any higher rate) and the cost of necessary or proper repairs directed in writing by the mortgagee, then in payment of interest due on the mortgage, and finally in payment of the residue to the person who (but for the receiver's possession) would be entitled to receive the income of the mortgaged property (ib. sub-s. 8). These powers are amendments of those contained in Lord Cranworth's Act, and apply to all kinds of mortgaged property, and not merely to real estate.

4. *Power to demand Deeds.* After the statutory power of sale (but not, it would appear, after a power of sale contained in the mortgage deed) becomes exerciseable, the mortgagee may recover such title deeds from any person not having an estate, interest or right in priority to the mortgage as a purchaser would be entitled to recover (sect. 21, sub-s. 7).

5. *Power to cut Timber.* A mortgagee in possession, is also to have power to cut and sell, and to contract twelve months ahead for the cutting and selling of timber and other trees ripe for cutting, unless planted for ornament or shelter (sect. 19, sub-s. 4).

6. *Powers of Leasing.* The 18th section of the new act contains powers of leasing which are quite new, and, so far as the mortgagee is concerned, are greatly in derogation of his usual rights. These powers enable the mortgagor or mortgagee, (and the latter as against any prior incumbrancers,) whichever happens to be in possession of the

premises, to lease without the other's consent, for an agricultural or occupation lease not exceeding twenty-one years, or for a building lease not exceeding ninety-nine years. Such leases are to take effect in possession not later than twelve months from date, to be at rack-rent without fine or premium, to contain a covenant for payment of rent, and a condition for re-entry on nonpayment for thirty days, and a counterpart is to be executed by the lessee and delivered to the lessor (sect. 18, sub-s. 1—8); and the lessor (if a mortgagor) must deliver a similar counterpart to the first mortgagee within one month after granting the lease (ib. sub-s. 11). Sub-sect. 17, however, enacts that the provisions of the section shall apply to any letting, and to an agreement for a lease whether in writing or not; the effect and object of which is not very clear, as no counterpart of an unwritten agreement could be delivered to the mortgagee. Sub-sect. 12 gives the party with whom the agreement is made a right to have specific performance decreed. It is presumed that this could hardly be done by summons under sect. 69, sub-s. 3. In case of a building lease, the consideration is to be that the lessee has erected, or improved, or undertakes within five years to erect or improve, buildings; or has executed or undertakes to execute within that period, improvements for building purposes. And here comes a most extraordinary provision, viz., that a building lease may be in consideration of a nominal rent for the first five years or part thereof (sect. 18, sub-s. 10). It would seem, therefore, that, at the uncontrolled will and pleasure of a mortgagor, the mortgaged property may for a period of five years be rendered barren of income, and the mortgagee be rendered quite unable to recover his interest by entering into possession. This power seems to me to be so detrimental to the interests of mortgagees, that I think solicitors ought in every case of a mortgage, to carefully consider whether the statutory leasing powers ought not to be expressly negatived, which may be done either by declaration in the mortgage deed, or *otherwise in writing* by the mortgagor and mortgagee. This very vague expression will obviously make it very unsafe for lessees of property in mortgage to

rely upon the act, as it will be almost impossible for them to know for certain whether such writing exist or not.

Trust Instruments and Wills. The implied powers and provisions in relation to trustees and executors are somewhat complex, and are rendered more so by the fact that some of them are retrospective and apply to instruments executed before as well as after the commencement of the act, and that some only apply to future instruments. With regard to these powers, I cannot but think that it is better to set out the primary administrative powers of a trustee in full, rather than conceal them in a statute of which the trustee probably never heard. As the great Francis Bacon puts it, "I knew a wise man that had it for a by-word, when he saw men hastening to a conclusion, 'Stay a little, that we may make an end the sooner.'" The position of trustees under any circumstances is enough to make them "damn all them that trust them," as Macbeth said; but if they have not only to be guided by their trust instrument, but by the resultant of the powers contained in it and in a complicated statute, their lives, when fiduciary duty is to be done, would be scarcely happier than that of the lyrical policeman. However, these remarks do not apply to what I may call secondary powers, such as the powers to appoint new trustees, and give effectual receipts, and possibly the power of sale; but in any case it is well to draw attention to the statutory powers, when intended to be used, by expressly incorporating them.

1. *Appointment of New Trustees.* The provisions of Lord Cranworth's Act in relation to the appointment of new trustees are repealed (sect. 71). They only applied to instruments executed after August 28th, 1860, and were in several respects faulty. For instance, they did not meet the case of a trustee going abroad. The new provisions are retrospective, and apply to instruments whenever executed, so that application to the Court for the appointment of new trustees will be far less frequent in future (sect. 31, sub-s. 8). The new power is also more carefully worded than the old one, but it still seems doubtful (as under the old *act*) whether a new trustee can be appointed in place of a

person who disclaims, for such a person never was a trustee for he never accepted the trusteeship, and the new provisions, like the old, only provide for the refusal to act of *trustees*. The new provisions provide that where a trustee, original or substituted, and whether appointed by the Court or otherwise, is dead, or remains abroad for over twelve months, or desires to be discharged, or refuses, or is unfit, or incapable to act, the person nominated for that purpose by the trust instrument, or if there be none, or none able or willing, then the surviving or continuing trustees or trustee (which expression includes a refusing or retiring trustee *if* willing to act in the execution of this one power (sect. 31, sub-s. 6)),* or the personal representatives of the last surviving or continuing trustee, may by writing appoint a new trustee or trustees (ib. sub-s. 1.) On such appointment, the number of trustees may be increased (ib. sub-s. 2); and where one only was originally appointed, it will not be necessary to appoint more than one new one; and where more than two were originally appointed, it will not be necessary to fill up the original number, so long as there are two at least to perform the trust (ib. sub-s. 3). Another very beneficial and useful provision is, that where there are more than two trustees, one of them may (with the consent of his co-trustees and of the donee of the power of appointing new trustees) retire, by means of a deed of declaration to that effect, without the necessity (which at present exists) of appointing a new trustee in his place (sect. 32). It is presumed that this would apply to a case of two or more trustees retiring where there were four or more trustees. The act declares that every new trustee, whether appointed under these statutory powers or by the Court, shall, as well before as after the trust property is vested in him, have the same powers as if he had been originally appointed a trustee (sect. 31, sub-s. 5, and sect. 33, sub-s. 1).

2. *Vesting of Trust Property.* The act also contains new and peculiar provisions in reference to the vesting of the trust property in new trustees, analogous to vesting orders

* This seems to guard against the decisions in *Stones v. Rowton*, 17 Beav. 308, and *Nicholson v. Wright*, 28 L. J., Ch. 312.

made by the Court. It enacts, that where a deed appointing new trustees contains a declaration by the appointor that the trust property shall vest in the persons who by virtue of that deed are trustees for performing the trust, such a declaration shall, without any conveyance or assignment, vest the trust property in them as joint tenants (sect. 34, sub-s. 1). There is a similar provision with reference to the case of one of several trustees retiring without appointing a new trustee; but in that case the retiring trustee, the continuing trustees, and the donee of the power of appointing new trustees (if any), must all join (ib. sub-s. 2). It is to be observed, that the declaration must be made by the *same deed* as that by which the new trustees are appointed, or by which a retiring trustee retires, and not by any subsequent instrument. In many cases of the appointment of new trustees this power will be extremely useful, and will in great measure supplant applications to the court for vesting orders.

For instance, a trustee leaves the country for more than twelve months, or becomes a lunatic, and perhaps the trust property has to be sold. Hitherto it has been necessary to apply to the Court for an order vesting the property in the acting trustees and a new trustee, for the estate then vested in the acting trustees and the trustee who is abroad or lunatic. Henceforth this may be done by the declaration above indicated. However, there are certain exceptions to the new method, viz. that it does not apply to the legal estate in copyholds, nor to land mortgaged to the trustees, nor to shares and stocks only transferable in the books of a company, or in manner prescribed by or under Act of Parliament (ib. sub-s. 3), in all of which cases it will still be necessary to apply to the Court where circumstances arise which prevent a proper conveyance or transfer being otherwise effected. For purposes of registration, the declaring party is to be considered the conveying party (ib. sub-s. 4). These provisions only apply to appointments of new trustees executed after the commencement of the act (ib. sub-s. 5). Whether the effect of this declaration, which can hardly of itself amount to a conveyance or assignment so as to be liable to the Stamp Act, will be to

relieve a deed for the appointment of new trustees and vesting of trust property from payment of the stamp formerly payable, remains to be seen. It was decided in *Hadgett v. Commissioners of Inland Revenue* (3 Ex. Div. 46), that such a deed should, notwithstanding the proviso in sect. 78 of the Stamp Act, be stamped with a 10s. stamp as a conveyance, and another 10s. stamp as an appointment of new trustees.

3. *Sales by Trustees.* The new act repeals the provisions of Lord Cranworth's Act in relation to sales by trustees, and substitutes for it a power (sect. 35) somewhat more extended, enabling trustees for sale, or having a power of sale, to sell or concur with any other person in the sale of all or any part of the property, either subject to prior charges or not, and either together or in lots, by auction or privately, subject to such conditions as they may think fit; with power to buy in and vary or rescind any contract, and to re-sell without being answerable for loss. This section only applies to trust instruments coming into operation after the commencement of the act. The new power does not seem to do away with the doubt expressed in *Rede v. Oakes* (4 De G., J. & S. 505), whether trustees can concur with owners of another property in a joint sale, where such sale was not clearly for the benefit of the estate, as to which see *Re Cooper and Allen* (L. R., 4 Ch. Div. 816).

4. *Trustees' Receipts.* The provision in Lord Cranworth's Act in relation to trustees' receipts is repealed by the new act and a provision substituted (sect. 36), which is retrospective, and more extended than that in Lord Cranworth's Act, applying not merely to money but also to securities and other personal property or effects.

5. *Powers of Management of Infants' Estates.* The act gives extensive powers for the management of *settled land* of males and unmarried females during infancy (sect. 42). It seems doubtful, however, whether these powers apply where the property is settled *by will*, and it certainly will not be safe until that point is decided to rely upon the section in drafting wills. The presumption, however, is that they do apply, as although there is no inter-

pretation of the word "settlement" in the act, it includes "Will" in the Settled Estates Act, and "Will entailing lands" in the Abolition of Fines and Recoveries Act, s. 1, and, unless controlled by the context, there is nothing in the word to limit its meaning to a settlement *inter vivos*. The power, too, only applies where the infant would be beneficially entitled to the *possession of the land* if of age, and would, it is submitted, not apply to a case where the legal estate is vested in trustees in trust to pay him the rents and profits.

The powers are exerciseable by trustees *named* for that purpose in the settlement, or if none are so named, then by the trustees of the settlement who may have a power of sale or a power to consent to a sale, or if there be none such, then by trustees to be appointed by the Court on the application of the infant's guardian or next friend. The powers themselves are the usual powers of management contained in well-drawn settlements, including directions as to the application of income, and the accumulation and investment of surplus income, and the payment of such accumulations to the infant at twenty-one, or, in case of a female, on marriage before that age, on her separate receipt and for her separate use; or if the infant dies under twenty-one (and being a woman without having been married), then if he or she are tenant for life or in tail by purchase, the accumulations are to go on the trusts, if any, declared concerning them by the settlement; but in case there be no such trusts, or if the infant takes by descent, or in fee, then they are to go to his or her next of kin.

The act also enables the powers to be exercised jointly with persons entitled to other undivided shares in the land. This power may be relied on in *settlements* where the trustees do not take the legal estate, but not in wills, nor where the legal estate is vested in trustees, and it applies only where the instrument under which the interest of the infant arises comes into operation after the commencement of the act.

6. *Powers of Maintenance.* The act also gives implied *prima facie* powers of maintenance to trustees of infants' *property*, whether the infant is entitled for life or for any

greater interest, and whether absolutely or contingently, &c.; and the income applicable is the income of any property held by trustees in trust for an infant, not "the income to which such infant may be entitled,"—the words used in 23 & 24 Vict. c. 145, s. 26. The application of the act to tenants for life is new, and it is probable from the wording of the section that it was intended to apply to cases where a legacy not bearing interest was given to an infant on attaining twenty-one, and directed to such cases as in *Re George* (5 Ch. Div. 837) (sect. 43). As the act does not expressly empower the trustees to pay the maintenance to the parent or guardian without requiring any account, and without seeing to the application thereof, I do not advise you to rely on it, unless you qualify it by words giving that additional power. This power is retrospective, and applies to existing instruments (sect. 43).

7. *Powers of Executors.* The powers and discretion to compound, &c., given to executors in Lord Cranworth's Act, are repealed, and practically re-enacted (sect. 37), with the following extensions, viz.:—they are made retrospective without limit, whereas Lord Cranworth's provisions were limited to instruments executed after the 28th of August, 1860. The new provisions apply to a sole executor, and also to trustees, whereas the former act only applied to executors, and not to trustees at all. The old act also limited the powers of composition to money, whereas the new act applies to any property.

8. *Survivorship of Powers.* The new act provides that where a power or trust is given to two or more executors or trustees jointly, then, unless the contrary is expressed, they may be exercised by the survivor or survivors (sect. 38). This provision only affects executorships and trusts constituted after or created by instruments coming into operation after the commencement of the act. So far as *trusts* and powers coupled with an interest are concerned, the power is not of much practical importance, as they always survived; but bare powers did not survive, and consequently the new provision will be useful in reference to them (sect. 38).

It may be here conveniently mentioned, that trustees, who rely upon the act in any dealings with their estate, are expressly protected (sect. 66).

Rent-charges and Annuities. It has been usual in creating a rent-charge or an annuity charged on land, or on the rents and profits of land, to insert in the instrument creating it provisions for effectually enforcing its payment. These usually consisted of powers of distress and entry, although a power of distress was annexed to even a rent *sec* by a statute of Anne. By the new act (sect. 44), rent-chargers and annuitants are granted a *primâ facie* power of distress in case the rent (not being incident to a reversion) or annuity, be in arrear for twenty-one days, and where in arrear for forty days a power to enter and sequestrate the income without impeachment of waste (although no legal demand may have been made), and to demise the land to trustees for a term, upon trust to raise by mortgage, sale or lease, or by any other reasonable means, the amount due or to become due and costs. It is, however, very questionable policy to adopt statutory powers of this kind, as it adds very little to the expense to insert them in the deed, where the parties can see at a glance what their rights are, instead of depending on the provisions of a statute of which they probably know nothing. Where, therefore, extreme brevity is not very desirable, a practitioner will, I think, do well to insert the usual provisions, instead of relying upon these implied powers.

Word "Heirs." Heretofore in a covenant, bond or other special contract in which the word "heirs" was omitted the covenantee or obligee could not *directly* sue the heir for breach, but, if he wanted to rely upon the real estate, was obliged to commence an administration action. The word "heirs" will be *primâ facie* implied in all future specialties (sect. 59). The provision, however, will rarely be of use, as it is very unusual to omit the word heirs in such instruments. The section is extended, however, by sub-s. 2, so as to apply to covenants implied by virtue of the act treated of in the next part of this book. In addition to this, covenants relating to lands of inheritance, are to be taken to be made with the covenantee, his heirs and assigns; and covenants relating to chattels real are to be taken to be made with the covenantee, his executors,

administrators and assigns (sect. 58). This latter section does not apply to covenants implied by act, but the same result is effected by sub-s. 6 of sect. 7.

Words "Survivor or Survivors." It has hitherto been customary in covenants where there was more than one covenantee, and the covenant was with them jointly, to repeat the words "and the survivor or survivors of them" upon every occasion on which the covenantees' names occurred. This was never necessary, and the act now puts all doubt out of the question by enacting that such covenants shall enure for the benefit of such survivor or survivors, or of any other person on whom the right to sue devolves (sect. 60).

Moneys advanced on Joint Account. Another section of the act, which I need only mention cursorily, is the sixty-first, by which it is enacted, that where money is expressed to be advanced by, or owing to, two persons on a mortgage or other obligation or a transfer thereof jointly, the survivors or survivor shall be able to give a good receipt notwithstanding notice of the severance of the joint account. The sting of this clause seems, like that of a scorpion, to lie in its tail, as a good receipt for a mortgage debt expressed to be advanced jointly could always be given by a surviving creditor where the debtor had no notice of the severance of the joint account.

II. NEW RIGHTS, DUTIES AND OBLIGATIONS, WHICH MAY BE IMPORTED INTO DOCUMENTS BY EXPRESS REFERENCE.

It is by no means a new idea to shorten documents by enacting that certain words of reference shall mean a great deal more than they appear to do on the face of them, and a statute was passed some thirty-six years ago with the same object, but became a dead letter; indeed, I have never in my experience seen a deed framed under it. Whether the clauses of the new act, which have a similar

object, will meet with a better fate, remains to be seen. Some of them appear to deserve it, and some, I must say, with great deference to those who are responsible for the act, do not.

Covenants for Title. In the first place, covenants for title may be imported by reference into conveyances and mortgages; but in order to import them it is absolutely necessary that the character in which the conveying party conveys should be *expressed* in the deed (sect. 7). However clearly this character may appear on the face of the deed, that will not suffice, unless it is expressed in words. Thus, in order to import the covenants for title usually given by a vendor or mortgagor of freeholds or leaseholds who is beneficially entitled, it is necessary to say expressly that he conveys "as beneficial owner." Similarly to import the covenant for further assurance usually given by a settlor, it is necessary to say expressly that he conveys "as settlor." So to import the covenant by a trustee or mortgagee, or other fiduciary grantor or assignor against incumbrances, it must be expressed in what capacity he grants or assigns. There is, however, one exception to this, viz., that where a person conveys by the direction of another, the directing person is *deemed* to be beneficial owner, and covenants for title by him are imported accordingly. In the case of husband and wife conveying as beneficial owners, there is a special provision, the exact effect of which seems to be doubtful, but which would not appear with certainty to make the husband covenant for the acts of his wife, which he certainly ought to do. On the other hand, a covenant on the part of the wife is clearly implied, which, though not expressed to be binding on her separate estate, must have been intended to be so, or the same would be nugatory. Such covenant is of course unusual, except in special cases. With regard to the words of the covenants themselves, they would seem to be unexceptionable, although perhaps a little stricter in favour of the grantee, mortgagee or assignee than is usual. Words signifying the singular number or masculine gender *also* import the plural number and feminine gender *mutatis*

mutandis (sect. 64). I think, however, that practitioners will do well to rely upon them only in simple cases where the conveying parties are all *sui juris*, and actually grant or assign the property which they themselves have. For it seems at least doubtful whether they can be imported where a party appoints by virtue of a power, or where a tenant in tail conveys the fee by means of an enrolled deed; and they are not very applicable to the case of persons *directing* others to convey, for such persons usually covenant not only for their own acts but also for the acts of the parties who convey by their direction, whereas it seems clear the covenants in the act only make the covenantor covenant for his *own* and his ancestor's acts. These observations will show that these statutory covenants can only be relied on in simple cases. Indeed, it may be doubted whether they are of any great advantage, for every practical conveyancer knows that in modern conveyances covenants for title do not add materially to the length of the deed. It is the recitals which make a modern conveyance a lengthy document, and if it is wished to shorten these, a radical alteration must be made in the tenure of land, or, at all events, in the equitable doctrine of notice; whether that game is worth the candle is another question. Indeed, now that by the Solicitors' Remuneration Act a solicitor is to be paid independently of length, I do not see why legislators need be so solicitous about it. It will be observed that in an assignment of leaseholds the usual covenant by the assignee to indemnify the assignor against the rent, covenants and conditions of lease is not implied, and will, therefore, have to be inserted in such cases.

Production and Custody of Title Deeds. We now come to the provisions which relate to the production and custody of muniments (sect. 9). The provisions relating to production may be imported by a written *acknowledgment* of a right to production, and the provisions relating to safe custody may be imported by a written *undertaking* for safe custody. The person who may give such acknowledgment is "a person" who "retains possession of documents," and it has been doubted whether the section will apply to the

case where the deeds have been handed over to the largest purchaser in a sale in lots. The effect of an acknowledgment is practically the same as the usual trustee's covenant to produce, *minus* the covenant to keep safely; and the effect of an undertaking for safe custody is the same as the trustee's covenant for safe custody, with this addition, that the statutory acknowledgment and undertaking respectively bind the deeds into whosoever hands they come, whereas the effect of the old covenant in this respect was doubtful. You will observe that I say that the new provisions are equivalent to the old *trustee's* covenant, by which I mean that they only bind the party giving the acknowledgment and undertaking so long as the documents remain in his possession. The new provision is therefore not equivalent to the old beneficial vendor's covenant, because, under the latter, it was his duty, before parting with the deeds, to procure a new covenant from the party to whom he delivered them, and consequently the covenantee always knew to whom to look, whereas here he may find it extremely difficult to find out in course of a few years in whose possession the deeds are. What makes this more to be regretted is, that a vendor may practically (in the absence, it is apprehended, of express contract to the contrary) force these statutory acknowledgments and undertakings on a purchaser, as the act states that such acknowledgments and undertakings shall satisfy any liability to give a covenant for production and safe custody (sect. 9, sub-s. 8).

Statutory Mortgages. The act is not confined merely to isolated *provisions* in deeds, but proposes, in the case of mortgages and transfers of mortgage and reconveyance, to import almost the whole of the provisions usually contained in such documents by the use of a particular form called a "statutory" mortgage, transfer or reconveyance (sects. 26—29). These forms may be found useful in simple cases, but I think that few practitioners will use them, because a fixed form can rarely be applied intact to the varying circumstances which occur in practice; and although the *statutory forms may be varied*, it will be always open to doubt *how far the variations are consistent with, or are met by, the statutory forms.*

As to what are implied in these forms, it may be shortly stated that a statutory mortgage implies a covenant for payment of principal and interest, and a proviso for redemption; but, seeing that the latter is implied in every mortgage, and that the former is very short and simple, it is difficult to see the necessity for these forms. Of course, under the provisions before stated, the usual mortgage powers and covenants for title are under the act to be implied not only in statutory, but in ordinary mortgages, so that the statutory form has no advantages in this respect. The other forms require no further comment, except that no doubt they do act in a roundabout way, very much like the documents for which they are intended to be substituted. Generally I would say that, "when in doubt, reject the statutory provisions" should be a rule as strictly observed, as the injunction to a whist-player to "return his partner's lead in trumps"—a rule which is said to have only two exceptions, one, in case you have none, and the other, in case of sudden death.

III. ALTERATIONS IN THE SUBSTANTIVE LAW OF PROPERTY.

We now come to what I humbly conceive to be the really useful portion of the act, that portion the utility of which will be extensively recognized, namely, not that which substitutes implied covenants and stipulations for those which the parties had much better settle expressly for themselves, but that which makes alterations in the law of property, removing certain grievous difficulties and hardships.

Discharge of Incumbrances. Of these amendments, one of the most important is the power of discharging what have been hitherto irredeemable incumbrances, such as mortgages, annuities, rent-charges, quit rents, and the like. Whenever there is an annual sum charged on land, or a capital sum charged on a determinable interest in land, and the land is *sold*, a judge of the chancery division on summons is empowered to direct or allow payment into court

of such a sum as will be sufficient when invested in government securities to provide for such charge by *means of the dividends*; and, in case of any other incumbrances, as will be sufficient to meet the incumbrance and interest, together in both cases with costs expenses and interest, "and any other contingency, except depreciation of investments," such costs, &c. not to exceed one-tenth part of the sum paid in in respect of the incumbrance; and upon payment in, the court may (with or without notice to the incumbrancer) declare the land free from the incumbrance, and make all necessary vesting orders accordingly; and may, after notice to the parties entitled (including, it is submitted, the party paying the money in), distribute the money so paid into court (sect. 5). This seems reasonable enough in case of annuities, rent-charges and the like, but with regard to ordinary mortgages the section seems to give something very much like powers of confiscation of a mortgagee's interest to a purchaser. For under it there is nothing to prevent a mortgagee, who is, perhaps, getting 5 per cent. interest on a good security of land, finding some morning that his security is gone, and that all he has is his principal money in consols at £3 per cent. The words, "and any other contingency" are hardly wide enough to give the court power to provide for this prospective loss to the mortgagee.

It will be observed, also, that the section may abolish in a very summary way behind the mortgagee's back his power of consolidation. It is, therefore, hardly to be expected that the court will allow the section to be put in force with regard to simple mortgages, although the words are wide enough to apply to such cases.

It will be perceived that these provisions apply only in case of sale. Another section of the act (sect. 45) provides for the redemption of quit rents, rent-charges or annuities issuing out of land, *at any time*, where the incumbrancer is absolutely entitled and not under any disability. It empowers the copyhold commissioners, on the requisition in writing of any person interested in the land, to certify *the amount required* for redemption of the incumbrance *behind the back of the incumbrancer*, and upon payment

or tender, after a month's notice, to the incumbrancer of such amount, the commissioners may certify the land to be freed from the incumbrance. The section only applies to perpetual rent-charges or annuities, but embraces existing ones. It seems that a copyholder may discharge his estate from quit rents without being obliged to enfranchise.

Abolition of "Consolidation of Mortgages." While on the subject of incumbrances, it may be stated that the act practically abolishes the doctrine of consolidation of mortgages, except by express contract (sect. 17), a provision which is, in my opinion, a distinct gain, only marred by the fact that the act does not go far enough. Hitherto if A. mortgaged Tenacre to B. for £500, and afterwards mortgaged Broadlands to him for £5,000, and then gave a second mortgage on Tenacre to C., B. not only had a claim on Broadlands for the £5,000 specifically secured by it, but he might consolidate both his mortgages into one, and refuse to allow C. to redeem little Tenacre without paying the £5,000 owing on Broadlands, and this although C. might have had no notice of the mortgage on Broadlands. Such has been hitherto the doctrine of judicial equity, and it has rendered it always a very dangerous thing to advance money on a second mortgage, or to purchase an equity of redemption, lest it should subsequently turn out that the first mortgagee had another mortgage on other property of the mortgagor which he could consolidate. The new act abolishes this right as to future mortgages, unless a contrary intention is expressed in the mortgage deeds or *one of them*. These last words, however, rob the provision of a great deal of its utility, as the contrary intention may (to follow my former illustration) be expressed in the mortgage of Broadlands, and so give the purchaser or second mortgagee of Tenacre no notice whatever of the fact. In such a case the second mortgagee or purchaser will be in as great danger as ever.

Transfer of Mortgage in lieu of Re-conveyance. Another just provision (sect. 15) is, that a mortgagor may henceforth compel a mortgagee (not being in possession) to transfer the mortgage to a third party, instead of re-con-

veying it, and this *notwithstanding any agreement to the contrary*. The provision is retrospective. Hitherto a mortgagor could not insist upon this. Of course the mortgagor cannot compel a transfer, except where he could compel a re-conveyance.

Right of Mortgagor to inspect Deeds. Another oppressive rule of law has been, that a mortgagee cannot be compelled to produce his deeds until he is redeemed. This rule is abolished (sect. 16) with regard to future mortgages, *notwithstanding any contract to the contrary*, so long as the right to redeem subsists.

Sales by Court of Mortgaged Property. The 86th section of the Chancery Procedure Act gave the court power in foreclosure actions to decree a sale instead of a foreclosure. The new act repeals this section, and (sect. 25) extends the power of the court, so as to embrace both foreclosure and redemption actions, and authorizes the bringing of actions for the sole purpose of procuring a sale. The new power is very wide in its terms, and is exerciseable notwithstanding the dissent or non-appearance of mortgagor or mortgagee, and may be made summarily, and on such terms as the court may think fit. In a sale in a redemption suit, the court may, however, give the conduct of it to the defendant, and may give special directions as to his costs. These provisions are retrospective.

The section will be very favourable to mortgagors. Formerly, if a mortgagor bringing an action of redemption failed to redeem at the time appointed, he was foreclosed of all his equity of redemption. Now this need never be the case, for the court can, on his application, order a sale.

It will also give an equitable mortgagee by deposit, whose only remedy formerly was foreclosure, the right of having a sale.

An order for sale after a decree for foreclosure was made under this section in *Union Bank v. Ingram*, W. N. C. 1882, p. 10. And in *Weston v. Davidson*, *ibid.* p. 28, on an application for a sale by defendant mortgagor, the court ordered a deposit to be paid by him into court to meet the expenses of sale, &c.

Attestation of Purchase Deed. One of the stock questions hitherto asked of a conveyancing counsel has been, whether a purchaser is entitled to have the conveyance executed by the vendor in his presence, or in that of his solicitor. The answer has been, as a general principle, "yes." The new act, however, to some extent reverses this, but enacts (sect. 8) that on future *sales* the purchaser shall, at his own cost, be entitled to have the conveyance attested by some person appointed by him, who may (if he likes) be his solicitor.

Severance in Leases. Some of our most technical and pedantic learning has been bestowed upon points arising where the reversionary interest in leaseholds has been severed or split up, by the sale or devise of the property by the lessor in lots, very delicate distinctions being made, which are beyond the scope of this treatise. It suffices to say, that in future leases, the rent and benefit of the lessee's covenants, and the right of re-entry on breach, and also the obligation of the lessor's covenants, will run with the reversion notwithstanding severance; and the right of re-entry will be apportioned and annexed to the severed parts (sects. 10—12). Under 22 & 23 Vict. c. 35, s. 3 (which does not appear to have been repealed), the rent or other reservation had to be legally apportioned in order to give the assignee of each part of the reversion the benefit of all conditions and powers of re-entry for non-payment of the rent or other reservation allotted to him.

Forfeiture of Leases. It has been long considered a great hardship that Courts of Equity could not relieve against forfeiture of leases under a condition of re-entry on breach of covenants, often of the most immaterial kind, with the sole exception of the covenant to pay rent and to insure. This power of re-entry has not seldom been exercised in the most oppressive way by speculators, who have bought up reversions of building leases cheap, and have taken advantage of the least breach to effect a forfeiture, and thus gain possession of the tenant's improvements before the time contemplated by the lease. This form of

chicanery will now be prevented, both in relation to existing and future leases. The 14th section of the act provides that forfeiture shall not be enforceable, unless the lessor serves on the lessee a notice specifying the breach of covenant complained of, and, if the same is capable of remedy, requiring the lessee to remedy it and make compensation in money, and unless the lessee makes default for a reasonable time to remedy the breach and compensate the lessor. In any event the court is empowered to relieve against the forfeiture on such terms as it may think fit. The section *cannot be avoided by a contract to the contrary*; but it does not apply to a breach of a covenant not to assign, underlet or part with the possession, nor to a condition for re-entry on bankruptcy, &c., nor (in the case of a mining lease) to the breach of a covenant to inspect the mine, books, plans, and so on. The principles of relief against forfeiture for non-payment of rent also remain as before the act.

Turning Long Terms into Fee Simple. A curious and quite new provision in the act, is that (sect. 65) which allows the owner of a long term to turn it into a fee simple without the concurrence of the reversioner, and without giving him any compensation.

The term must have been originally for not less than 300 years, and at least 200 must be unexpired, and there must be no equity of, or trust for, redemption "affecting the freeholder or other person entitled in reversion expectant on the term," and no rent incident to the reversion other than a peppercorn. The words within inverted commas would seem to imply that this section was intended to apply to a sub-term with a leasehold reversion, as it is impossible otherwise to give an adequate meaning to the words, "or other person entitled in reversion, &c." If such is the case it has been pointed out that it may work a great injustice in a case like this: A., freeholder, demises land for a long term at a substantial rent to B.; B., in consideration of a fine or premium, sub-demises to C. at a peppercorn rent. C. makes the declaration by deed *required by the act*; his term thereby becomes enlarged into *a fee simple*, and A. loses his rent, or if he does not, the

strange anomaly is presented of two fee simple estates, to one of which is incident (if a very liberal interpretation is given to sub-s. 4 of the section), the payment of rent to the owner of the other.

Any person beneficially entitled to the possession of such a term, or any trustee entitled in right of the term to receive the income, or having the term vested in him in trust for sale, or any personal representatives in whom the term is vested, may turn it into a fee simple, whether it be incumbered or not. Married women (other than those entitled for their separate use, with or without power of anticipation) must have the consent of their husbands. The mode of effecting the conversion is by a declaratory deed, and the fee simple so created is to be subject to the same trusts and provisions as the term. There is a provision providing, that where a term is settled upon the same trusts as freeholds comprised in the same settlement, so far as the law permits, the term, when converted, shall be settled accordingly, and until settled shall devolve like the freeholds. The converted term carries minerals, even where the term itself was with impeachment of waste, except such minerals as have not at the time of enlargement been severed in right (which it is presumed means "reserved by the deed creating the term") or in fact, or have not been severed or reserved by an Inclosure Act or award.

The framers of the act seem to have been unaware that a reversion in a very long term has sometimes a market value. To my unbounded astonishment 200*l.* was paid by the termor for such a reversion in some sixty-seven acres, in a case in which I was counsel in the early part of the year. The act practically confiscates this value, whatever it may be.

Trust and Mortgage Estates on Death. Perhaps one of the most useful provisions, and one which will put an end to a great many difficult questions, is that (sect. 30) which provides, that on the death of a trustee or mortgagee of freeholds or copyholds his estate shall vest in his executor or administrator notwithstanding any express devise of

trust and mortgage estates. Whether an executor would have to be admitted to copyholds, is only one of the numerous questions which will arise under the act. As the estate vests in the executor, it is assumed that he will. The half-hearted section of the Vendor and Purchaser Act, 1874, in relation to estates vested in that unknown quantity a "bare trustee," is repealed. This provision only applies to future deaths, so that the old difficulties will doubtless crop up for many years to come.

Completion after Death of Vendor. Analogous to the devolution of trust and mortgage estates, is the provision contained in section 4, to the effect that *in future* on the death of a vendor of freeholds, his personal representatives shall have power to convey the land for all the estate *vested in him at his death* in any manner proper for giving effect to the contract. This will prevent the necessity of getting a vesting order where the vendor's heir is an infant. Hitherto this could not be done under the "bare trustee" provision, except perhaps in the almost impossible case of a vendor receiving his purchase-money, and dying before executing conveyance. (See *Morgan v. Swansea Urban Sanitary Authority*, 9 Ch. Div. 582.)

Married Women. There are two important provisions in relation to married women, viz., one (sect. 40) empowering them to execute valid powers of attorney, even during infancy; and the other empowering the court (where it is for her benefit and with her consent) to bind a woman's interest in property which she is restrained from anticipating (sect. 39). It is apprehended that the former power would not enable a married woman by appointing an attorney to evade acknowledging a deed, which would otherwise require acknowledgment. (See *Graham v. Jackson*, 6 Q. B. 811.) As to the latter, hitherto "in no case and by no device could the restraint on anticipation be evaded." (*Stanley v. Stanley*, L. R., 7 Ch. Div. 589.) In *Re Lilwall's Trusts*, W. N. C. 1882, p. 6, V.-C. Hall refused to consider a petition presented under this section by a married woman entitled to a fund for her separate use

without power of anticipation, for leave to apply part of the fund in repairs; and such applications should always be by summons under sect. 69.

Infants and Settled Estates Act. One of the most useful clauses of the act is the 41st, which brings estates in fee simple or leaseholds at a rent vested in infants, within the provisions of the Settled Estates Act. Hitherto no property which was not originally limited for successive estates could be dealt with under that act, although under 1 Will. 4, c. 65, s. 17, power was given to the court to allow mining, building, or ordinary leases of land of which an infant was seised in fee or in tail, or to which, if leaseholds, he was absolutely entitled. This will render infants' property saleable and lettable.

Powers of Attorney. The old law in relation to powers of attorney is considerably altered. Hitherto the attorney could only effectually execute a deed by signing the name of his principal, and, as not a few did not know of this rule, it sometimes happened that the attorney signed his own name, a quite futile proceeding. The act remedies this (sect. 46), allowing the attorney either to sign his own, or his principal's, name; this applies to existing as well as future powers, but not so as to validate previous invalid executions. The act also protects any persons doing, *in future*, any act or paying any money under a power of attorney which shall have been revoked, or the donor of which shall be dead, lunatic or bankrupt, if such persons had no notice of any such fact; but the persons interested in the money are to have the same rights against the payee as they now have against the payer (sect. 47). This section extends to all persons the protection formerly given by 22 & 23 Vict. c. 35, s. 26, to trustees and executors. The act also allows an existing or future power of attorney, properly verified, to be deposited at the central office, and office copies of it are to be evidence of its contents (sect. 48).

Word "Heirs" unnecessary to pass Fee. One innovation is made which would, we may be sure, have made

Coke's or Littleton's hair stand on end, could they but revisit earth. It will no longer be necessary to use the word "heirs" to pass a fee simple, or the words "heirs of the body" in order to pass an estate tail (sect. 51). However, the estate intended to be passed must not be left to inference, but must be expressly stated; as, for instance, "to A. in fee simple," or "to B. in tail," or "to C. in tail male," and so on, so that the alteration seems frivolous, and leaves the matter as technical as before.

Conveyances to the Grantor and Another. At one time no property could be directly conveyed by a man to himself and another, nor by a husband to a wife, or *vice versd*, they being considered as one in law. For, as the old lawyers gravely put it, "how can a man make a *gift* to himself." In the case of leaseholds and other personal property (except choses in action) this was (so far as an assignment to the assignor and another is concerned) remedied by Lord St. Leonards' Act; and by means of the Statute of Uses conveyancers have got over the rule in the case of real property also. Choses in action have, however, never been hitherto so assignable. The new act completely reverses the ancient rule, and makes freeholds and choses in action directly assignable to the grantor and another, and by a husband to a wife, and *vice versd* (sect. 50). But query, whether the new rule enables personalty other than choses in action to be assigned by a husband to a wife?

Grant of Easements. Another provision, designed to upset an old technicality, is contained in sect. 62, to the effect that freehold land may be conveyed to the use that A. may have any easement over the same, and thereupon such easement shall vest in him in possession for the estate or interest expressed to be limited to him, and he and his successors in title shall have, use and enjoy the same accordingly.

Heretofore, easements were not capable of being limited to a use, and easements in gross were not assignable at all. *Henceforth* an easement will be able to be limited by

way of use. Whether the effect of the provision that "he and his successors in title shall have the use and enjoyment thereof accordingly," enable an easement in gross to be assigned, seems to be doubtful. Hitherto, such easements have been personal only, and not capable of alienation.

Word "Grant" unnecessary. The statute declares (what has, however, always been the law) that the word grant is not necessary to convey hereditaments (sect. 49).

Receipts. Some very useful sections relate to receipts for purchase-money, viz.:—that an endorsed receipt shall not be necessary in a future deed where there is a receipt in the body of it; and that in future deeds, either a receipt in the body or endorsed, shall be sufficient evidence of payment to satisfy and protect a subsequent purchaser without notice (sects. 54 and 55). The act provides that in future, where a solicitor produces a deed having a receipt either in the body of it or endorsed on it, and the deed is executed, or the receipt is signed, that shall be sufficient authority to any person liable to pay the money to pay it to the solicitor (sect. 56). However, the effect of this section may be to open the door to fraud on a purchaser or mortgagor by an unscrupulous solicitor. Such a case is to be found in *Ex parte Swinbanks, In re Shanks* (11 Ch. Div. 525). Heretofore, in order to relieve the payor of money to a solicitor from liability to pay it over again, it was necessary that the solicitor should produce some express authority from his client to receive it.

Release of Powers. Heretofore, powers simply collateral (*i. e.*, where the donee of the power had not and never had any interest), such as powers of sale, &c., could not be released; but powers appendant or in gross could be. Henceforth this rule will cease to operate, and present and future collateral powers may be released by deed, or the donee may enter into a valid contract not to exercise them (sect. 52). But query, whether trustees with power of sale at request of tenant for life would be enabled to release their power.

Annexed Deeds. The act also contains provisions (which, it is conceived, are merely declaratory of the existing law), making an annexed or supplemental deed in all respects equivalent to an indorsed one (sect. 53).

Notices, Procedure, &c. There are certain provisions relating to the giving of notices under the act, designed to facilitate persons giving them (sect. 67); and also certain provisions in respect to applications to the court, (which are all to be made by summons,) and providing that an order of court shall not, as against a purchaser, be invalidated for want of jurisdiction, or want of concurrence, notice, &c.; and this section is made applicable to sales, leases, &c., under the Settled Estates Act (sects. 69 and 70). Hitherto, under the Settled Estates Act, a purchaser after conveyance executed, had an unimpeachable title notwithstanding any irregularities of form or any excess in the exercise of the jurisdiction of the court, except as against any person whose concurrence ought to have been obtained, and had not been dispensed with. (*In re Shepherd's Estates*, L. R., 8 Eq. 571.)

SOLICITORS' REMUNERATION.

By this short act, the old plan by which a solicitor's remuneration depended upon the length of the documents, is put an end to, and the more reasonable rule introduced, that solicitors shall be paid by an *ad valorem* fee or commission on the purchase-money, rent, or value of the property. The act authorizes certain official personages to make rules for prescribing and regulating the remuneration of solicitors in respect of business connected with sales, purchases, leases, mortgages, settlements, and other matters of conveyancing, and in respect of other business, not being business in any action or matter in court or judge's chambers or otherwise contentious (S. R. Act, sect. 2). These rules are to be submitted to the Council of the Incorporated Law Society for suggestions, and finally have to be laid before parliament for one month before coming into operation. Certain

principles for the guidance of the framers of the rules are laid down in sects. 4 and 5, but as these rather affect those functionaries than the general body of practitioners, they need not be alluded to further here. The rules are not yet out.

The act (sect. 8) contains a very useful provision, enabling solicitors and clients to agree, before or after, or in the course of, the transaction of any such business as above mentioned, for the remuneration of the solicitor, either by a gross sum, or commission, or salary, or otherwise, and either inclusive or exclusive of costs out of pocket, fees, &c. The agreement must be in writing and signed by the party to be bound or his agent, and may be sued upon or impeached on the like grounds as any other agreement may be.

If, upon any taxation of costs, any such agreement is relied on by a solicitor, and is objected to by the client as unfair, the taxing officer may inquire into the facts, and certify the same to the Court, and if on such certificate it appears to the Court or a judge that just cause has been shown for cancelling the agreement, or reducing the amount payable under it, such cancellation or reduction (with all necessary consequential directions) may be decreed.

Such, then, is a sketch of these important acts. A great deal of the criticism which has been lavished on the Conveyancing Act has been of merely academic interest; acute verbal criticism, showing how much more neatly the act might have been expressed. Such comments I have eschewed as of little practical value. The act is not free from imperfections, and might very well have effected other very desirable changes in the law, particularly altering the unreasonable rule that an administrator does not represent the estate of the person of whom his intestate was executor or administrator, and so making it so often necessary to take out letters of administration de bonis non. The decision, too, in *Want v. Stallibras* (L. R., 8 Ex. 175), that where property is settled in trust for A. for life, and afterwards

in trust for sale, the trustee and tenant for life cannot accelerate the sale, and sell before the death of the tenant for life, might surely have been reversed by the statute.

In the opinion of some persons the act, coupled with the Solicitors' Remuneration Act, makes conveyancing "*stat magni nominis umbra*;" I think, however, that after what I have said, you will scarcely be disposed to agree with this, or to think that the statute deserves that part of its title which claims to have simplified the practice of conveyancing. I have seen it stated, that there is great danger of accountants, auctioneers and other lay personages drawing conveyances under the provisions of the act, and so taking away the work from the lawyers. It strikes me, however, that if any non-legal worthy tries his hand at it, he will be more likely to make work for the lawyers than to abstract it from them. In truth the act is very technical, and the saying of Solomon will still remain as true as ever, "without counsel purposes are disappointed."

APPENDIX.

CONVEYANCING AND LAW OF PROPERTY ACT, 1881.

44 & 45 VICT. c. 41.

An Act for simplifying and improving the practice of Conveyancing; and for vesting in Trustees, Mortgagees, and others various powers commonly conferred by provisions inserted in Settlements, Mortgages, Wills, and other Instruments; and for amending in various particulars the Law of Property; and for other purposes. [22nd August, 1881]

BE IT ENACTED as follows :

I.—PRELIMINARY.

1. *Short Title; Commencement; Extent.*—(1.) This act may be cited as the Conveyancing and Law of Property Act, 1881.

(2.) This act shall commence and take effect from and immediately after the 31st day of December, 1881.

(3.) This act does not extend to Scotland.

2. *Interpretation of Property, Land, &c.*—In this act—

(i.) Property, unless a contrary intention appears, includes real and personal property, and any estate or interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest :

(ii.) Land, unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments, corporeal or incorporeal, and houses and other buildings, also an undivided share in land :

(iii.) In relation to land, income includes rents and profits, and possession includes receipt of income :

(iv.) Manor includes lordship, and reputed manor or lordship :

(v.) Conveyance, unless a contrary intention appears, includes assignment, appointment, lease, settlement, and other

assurance, and covenant to surrender, made by deed, on a sale, mortgage, demise, or settlement of any property, or on any other dealing with or for any property; and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance:

(vi.) Mortgage includes any charge on any property for securing money or money's worth; and mortgage money means money, or money's worth, secured by a mortgage; and mortgagor includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest, or right, in the mortgaged property; and mortgagee includes any person from time to time deriving title under the original mortgagee; and mortgagee in possession is, for the purposes of this act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property:

(vii.) Incumbrance includes a mortgage in fee, or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and incumbrancer has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof:

(viii.) Purchaser, unless a contrary intention appears, includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for any property; and purchase, unless a contrary intention appears, has a meaning corresponding with that of purchaser; but sale means only a sale properly so called:

(ix.) Rent includes yearly or other rent, toll, duty, royalty, or other reservation, by the acre, the ton, or otherwise; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift:

(x.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings; and a building lease is a lease for building purposes or purposes connected therewith:

(xi.) A mining lease is a lease for mining purposes, that is, the searching for, winning, working, getting, making mer-

chantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes :

(xii.) Will includes codicil :

(xiii.) Instrument includes deed, will, inclosure award, and act of parliament :

(xiv.) Securities include stocks, funds and shares :

(xv.) Bankruptcy includes liquidation by arrangement, and any other act or proceeding in law having, under any act for the time being in force, effects or results similar to those of bankruptcy; and bankrupt has a meaning corresponding with that of bankruptcy :

(xvi.) Writing includes print; and words referring to any instrument, copy, extract, abstract, or other document include any such instrument, copy, extract, abstract, or other document being in writing or in print, or partly in writing and partly in print :

(xvii.) Person includes a corporation :

(xviii.) Her majesty's high court of justice is referred to as the court.

II.—SALES AND OTHER TRANSACTIONS.

Contracts for Sale.

3. Application of stated Conditions of Sale to all Purchases.]

—(1.) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(2.) Where land of copyhold or customary tenure has been converted into freehold by enfranchisement, then under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title to make the enfranchisement.

(3.) A purchaser of any property shall not require the production, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law, or stipulated, for commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; nor shall he require any information, or make any

requisition, objection, or inquiry, with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document, or that prior title, is recited, covenanted to be produced, or noticed; and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any deed, will or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise.

(4.) Where land sold is held by lease (not including under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(5.) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

(6.) On a sale of any property, the expenses of the production and inspection of all acts of parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the vendor's possession, and the expenses of all journeys incidental to such production or inspection, and the expenses of searching for, procuring, making, verifying, and producing *all certificates*, declarations, evidences and information not in

the vendor's possession, and all attested, stamped, office, or other copies or abstracts of, or extracts from, any acts of parliament, or other documents aforesaid, not in the vendor's possession, if any such production, inspection, journey, search, procuring, making, or verifying is required by a purchaser, either for verification of the abstract, or for any other purpose, shall be borne by the purchaser who requires the same; and where the vendor retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

(7.) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(8.) This section applies only to titles and purchasers on sales properly so called, notwithstanding any interpretation in this act.

(9.) This section applies only if and as far as a contrary intention is not expressed in the contract of sale, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(10.) This section applies only to sales made after the commencement of this act.

(11.) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the court.

4. *Completion of Contract after Death.*—(1.) Where at the death of any person there is subsisting a contract enforceable against his heir or devisee, for the sale of the fee simple or other freehold interest, descendible to his heirs general, in any land, his personal representatives shall, by virtue of this act, have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract.

(2.) A conveyance made under this section shall not affect the beneficial rights of any person claiming under any testamentary disposition or as heir or next of kin of a testator or intestate.

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(3.) This section applies only in cases of death after the commencement of this act.

Discharge of Incumbrances on Sale.

5. *Provision by Court for Incumbrances, and Sale freed therefrom.*—(1.) Where land subject to any incumbrance, whether immediately payable or not, is sold by the court, or out of court, the court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in government securities, the court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the court for special reason thinks fit to require a larger additional amount.

(2.) Thereupon, the court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in court.

(3.) After notice served on the persons interested in or entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(4.) This section applies to sales not completed at the commencement of this act, and to sales thereafter made.

General Words.

6. *General words in Conveyances of Land, Buildings or Manor.*—(1.) A conveyance of land shall be deemed to include and shall by virtue of this act operate to convey, with

the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2.) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

(3.) A conveyance of a manor shall be deemed to include and shall by virtue of this act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge and all that to view of frankpledge doth belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief-rents, quit-rents, rentscharge, rents seck, rents of assize, fee farm rents, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining or reputed to appertain, or at the time of conveyance demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.

(4.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(5.) This section shall not be construed as giving to any person a better title to any property, right or thing in this

section mentioned than the title which the conveyance gives to him to the land or manor expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

(6.) This section applies only to conveyances made after the commencement of this act.

Covenants for Title.

7. *Covenants for Title to be Implied.*—(1.) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say:

(A.) *On Conveyance for Value, by Beneficial Owner.*—In a conveyance for valuable consideration, other than a mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

Right to Convey—Quiet Enjoyment—Freedom from Incumbrance—Further Assurance.—That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly,

without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys derives title, otherwise than by purchase for value; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims and demands other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned, or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value; and further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made,

as by him or them or any of them shall be reasonably required:

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

(B.) *On Conveyance of Leaseholds for Value, by Beneficial Owner.*—In a conveyance of leasehold property for valuable consideration, other than a mortgage, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

Validity of Lease.—That, notwithstanding anything by the person who so conveys, or any one through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance:

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

(C.) *On Mortgage by Beneficial Owner.*—In a conveyance by way of mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

Right to Convey—Quiet Enjoyment—Freedom from Incumbrance—Further Assurance.—That the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed; and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the

person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy or take and have, the subject-matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims, and demands whatever, other than those subject whereto the conveyance is expressly made; and further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.

(D.) *On Mortgage of Leaseholds, by Beneficial Owner.*—In a conveyance by way of mortgage of leasehold property, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

Validity of Lease—Payment of Rent and Performance of Covenants.—That the lease or grant creating the term or

estate for which the land is held is, at the time of conveyance, a good, valid, and effectual lease or grant of the land conveyed and is in full force, unforfeited, and unsurrendered and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed and performed up to the time of conveyance; and also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and performed all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them:

(E.) *On Settlement.*]—In a conveyance by way of settlement, the following covenant by a person who conveys and is expressed to convey as settlor (namely):

For further Assurance, Limited.]—That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, *subject as, if so expressed, and in the manner in which*

the conveyance is expressed to be made, as by them or any of them shall be reasonably required :

(F.) *On Conveyance by Trustee or Mortgagee.*—In any conveyance, the following covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the court, which covenant shall be deemed to extend to every such person's own acts only (namely) :

Against Incumbrances.—That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

(2.) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

(3.) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

(4.) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a

deceased person, or as committee of a lunatic so found by inquisition, or under an order of the court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

(5.) In this section a conveyance includes a deed conferring the right to admittance to copyhold or customary land, but does not include a demise by way of lease at a rent, or any customary assurance, other than a deed, conferring the right to admittance to copyhold or customary land.

(6.) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

(7.) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences, as if such variations or extensions were directed in this section to be implied.

(8.) This section applies only to conveyances made after the commencement of this act.

Execution of Purchase Deed.

8. Rights of Purchaser as to Execution.]—(1.) On a sale, the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his solicitor, as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor.

(2.) This section applies only to sales made after the commencement of this act.

Production and Safe Custody of Title Deeds.

9. Acknowledgment of Right to Production, and Undertaking for safe Custody of Documents.]—(1.) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided.

(2.) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

(3.) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest or right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

(4.) The obligations imposed under this section by an acknowledgment are—

- (i.) An obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any one by him authorized in writing; and
- (ii.) An obligation to produce the documents or any of them at any trial, hearing or examination in any court, or in the execution of any commission, or elsewhere in the united kingdom, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

- (iii.) An obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5.) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6.) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7.) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and the court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(8.) An acknowledgment shall by virtue of this act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

(9.) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10.) Any person claiming to be entitled to the benefit of such an undertaking may apply to the court to assess damages for any loss, destruction of, or injury to the documents or any of them, and the court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11.) An undertaking for safe custody of documents shall by virtue of this act satisfy any liability to give a covenant for safe custody of documents.

(12.) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all *such other rights* relative to the production or inspection, or

the obtaining of copies of documents as are not, by virtue of this act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

(13.) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

(14.) This section applies only to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the commencement of this act.

III.—LEASES.

10. *Rent and Benefit of Lessee's Covenants to run with Reversion.*—(1.) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced, and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(2.) This section applies only to leases made after the commencement of this act.

11. *Obligation of Lessor's Covenants to run with Reversion.*—(1.) The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the

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obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2.) This section applies only to leases made after the commencement of this act.

12. *Apportionment of Conditions on Severance, &c.*—(1.) Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition, contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2.) This section applies only to leases made after the commencement of this act.

13. *On Sub-demise, Title to Leasehold Reversion not to be required.*—(1.) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

(2.) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(3.) This section applies only to contracts made after the commencement of this act.

Forfeiture.

14. *Restrictions on and Relief against Forfeiture of Leases.*—(1.) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice

specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2.) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court, in the circumstances of each case, thinks fit.

(3.) For the purposes of this section a lease includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4.) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any act of parliament.

(5.) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(6.) This section does not extend—

(i.) To a covenant or condition against the assigning, under-letting, parting with the possession, or dis-

- posing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or
- (ii.) In case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.
- (7.) The enactments described in Part I. of the second schedule to this act are hereby repealed.
- (8.) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.
- (9.) This section applies to leases made either before or after the commencement of this act, and shall have effect notwithstanding any stipulation to the contrary.

IV.—MORTGAGES.

15. *Obligation on Mortgagee to transfer instead of re-conveying.*—(1.) Where a mortgagor is entitled to redeem, he shall, by virtue of this act, have power to require the mortgagee, instead of re-conveying, and on the terms on which he would be bound to re-convey, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall, by virtue of this act, be bound to assign and convey accordingly.

(2.) This section does not apply in the case of a mortgagee being or having been in possession.

(3.) This section applies to mortgages made either before or after the commencement of this act, and shall have effect notwithstanding any stipulation to the contrary.

16. *Power for Mortgagor to inspect Title-Deeds.*—(1.) A mortgagor, as long as his right to redeem subsists, shall, by virtue of this act, be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

(2.) This section applies only to mortgages made after the

commencement of this act, and shall have effect notwithstanding any stipulation to the contrary.

17. *Restriction on Consolidation of Mortgages.*—(1.) A mortgagor seeking to redeem any one mortgage, shall, by virtue of this act, be entitled to do so, without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them.

(3.) This section applies only where the mortgages or one of them are or is made after the commencement of this act.

Leases.

18. *Leasing Powers of Mortgagor and of Mortgagee in Possession.*—(1.) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as is in this section described and authorized.

(2.) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor; have, by virtue of this act, power to make from time to time any such lease as aforesaid.

(3.) The leases which this section authorizes are—

(i.) An agricultural or occupation lease for any term not exceeding twenty-one years; and

(ii.) A building lease for any term not exceeding ninety-nine years.

(4.) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(5.) Every such lease shall be made to take effect in possession not later than twelve months after its date.

(6.) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(7.) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the

rent not being paid [within a time therein specified not exceeding thirty days.

(8.) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

(9.) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute, within that time, on the land leased, an improvement for or in connexion with building purposes.

(10.) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(11.) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee; but the lessee shall not be concerned to see that this provision is complied with.

(12.) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease, if granted, would be binding.

(13.) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed, or of any such writing, and to the provisions therein contained.

(14.) Nothing in this act shall prevent the mortgage deed from reserving to or conferring on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exerciseable, as far as may be, as if they were conferred by this act, and with all the like

incidents, effects, and consequences, unless a contrary intention is expressed in the mortgage deed.

(15.) Nothing in this act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this act had not been passed.

(16.) This section applies only in case of a mortgage made after the commencement of this act; but the provisions thereof, or any of them, may, by agreement in writing made after the commencement of this act, between mortgagor and mortgagee, be applied to a mortgage made before the commencement of this act, so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(17.) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

Sale; Insurance; Receiver; Timber.

19. Powers incident to Estate or Interest of Mortgagee.]—

(1.) A mortgagee, where the mortgage is made by deed, shall, by virtue of this act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):

- (i.) A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby; and
- (ii.) A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or pro-

perty of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and

- (iii.) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part thereof; and
- (iv.) A power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract.

(2.) The provisions of this act relating to the foregoing powers, comprised either in this section, or in any subsequent section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences, as if such variations or extensions were contained in this act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

(4.) This section applies only where the mortgage deed is executed after the commencement of this act.

20. Regulation of Exercise of Power of Sale.]—A mortgagee shall not exercise the power of sale conferred by this act unless and until—

- (i.) Notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or
- (ii.) Some interest under the mortgage is in arrear and unpaid for two months after becoming due; or
- (iii.) There has been a breach of some provision contained

in the mortgage deed or in this act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

21. *Conveyance, Receipt, &c., on Sale.*—(1.) A mortgagee exercising the power of sale conferred by this act shall have power, by deed, to convey the property sold, for such estate and interest therein as is the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests and rights which have priority to the mortgage; except that, in the case of copyhold or customary land, the legal right to admittance shall not pass by a deed under this section, unless the deed is sufficient otherwise by law, or is sufficient by custom, in that behalf.

(2.) Where a conveyance is made in professed exercise of the power of sale conferred by this act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorized, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(3.) The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into court under this act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorized to give receipts for the proceeds of the sale thereof.

(4.) The power of sale conferred by this act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5.) The power of sale conferred by this act shall not affect the right of foreclosure.

(6.) The mortgagee, his executors, administrators or assigns shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this act or of any trust connected therewith.

(7.) At any time after the power of sale conferred by this act has become exerciseable, the person entitled to exercise the same may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

22. Mortgagee's Receipts, Discharges, &c.—(1.) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

(2.) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this act directed respecting money received by him arising from a sale under the power of sale conferred by this act; but with this variation, that the costs, charges and expenses payable shall include the costs, charges and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

23. Amount and Application of Insurance Money.—(1.) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this act shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, then shall not exceed two third parts of the amount that would be required, in case of total destruction, to restore the property insured.

(2.) An insurance shall not, under the power conferred by this act, be effected by a mortgagee in any of the following cases (namely):

- (i.) Where there is a declaration in the mortgage deed that no insurance is required:

- (ii.) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed :
- (iii.) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee is by this act authorized to insure.

(3.) All money received on an insurance effected under the mortgage deed or under this act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4.) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage.

24. Appointment, Powers, Remuneration and Duties of Receiver.]—(1.) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2.) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3.) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same.

(4.) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorize the receiver to act.

(5.) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6.) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfac-

tion of all costs, charges and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the court thinks fit to allow, on application made by him for that purpose.

(7.) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire, out of the money received by him, any building, effects or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8.) The receiver shall apply all money received by him as follows (namely):

- (i.) In discharge of all rents, taxes, rates and outgoings whatever affecting the mortgaged property; and
- (ii.) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and
- (iii.) In payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage deed or under this act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and
- (iv.) In payment of the interest accruing due in respect of any principal money due under the mortgage;

and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

Action respecting Mortgage.

25. Sale of Mortgaged Property in Action for Foreclosure, &c.]—(1.) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption, in the alternative.

(2.) In any action, whether for foreclosure, or for redemption or for sale, or for the raising and payment in any manner of mortgage money, the court, on the request of the mort-

gagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including, if it thinks fit, the deposit in court of a reasonable sum fixed by the court, to meet the expenses of sale and to secure performance of the terms.

(3.) But, in an action brought by a person interested in the right of redemption and seeking a sale, the court may, on the application of any defendant, direct the plaintiff to give such security for costs as the court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4.) In any case within this section the court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

(5.) This section applies to actions brought either before or after the commencement of this act.

(6.) The enactment described in Part II. of the second schedule to this act is hereby repealed.

(7.) This section does not extend to Ireland.

V.—STATUTORY MORTGAGE.

26. *Form of Statutory Mortgage in Schedule.*—(1.) A mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of statutory mortgage, being in the form given in Part I. of the third schedule to this act, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) There shall be deemed to be included, and there shall by virtue of this act be implied, in the mortgage deed—

First, a covenant with the mortgagee by the person expressed therein to convey as mortgagor to the effect following (namely):

That the mortgagor will, on the stated day, pay to the

mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six calendar months from the day stated for payment of the mortgage money :

Secondly, a proviso to the effect following (namely):

That if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall re-convey the mortgaged property to the mortgagor, or as he shall direct.

27. *Forms of Statutory Transfer of Mortgage in Schedule.*]

—(1.) A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three forms (A.) and (B.) and (C.) given in Part II. of the third schedule to this act as may be appropriate to the case, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) In whichever of those three forms the deed of transfer is made, it shall have effect as follows (namely):

(i.) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators, and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee :

(ii.) All the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

(3.) If the deed of transfer is made in the form (B.), there *shall also be deemed to be included, and there shall by virtue*

of this act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor to the effect following (namely) :

That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed ; and will thereafter, as long as the mortgage money, or any part thereof, remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

(4.) If the deed of transfer is made in the form (C.), it shall, by virtue of this act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto, accordingly ; but it shall not be liable to any increased stamp duty by reason only of it being designated a mortgage.

28. *Implied Covenants, Joint and Several.*—In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them ; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him.

29. *Forms of Re-conveyance of Statutory Mortgage in Schedule.*—A re-conveyance of a statutory mortgage may be made by a deed expressed to be made by way of statutory re-conveyance of mortgage, being in the form given in Part III. of the third schedule to this act, with such variations and additions, if any, as circumstances may require.

VI.—TRUST AND MORTGAGE ESTATES ON DEATH.

30. *Devolution of Trust and Mortgage Estates on Death.*—

(1.) Where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly, all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him; and, for the purposes of this section, the personal representatives, for the time being, of the deceased, shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers.

(2.) Section four of the Vendor and Purchaser Act, 1874, and section forty-eight of the Land Transfer Act, 1875, are hereby repealed.

(3.) This section, including the repeals therein, applies only in cases of death after the commencement of this act.

VII.—TRUSTEES AND EXECUTORS.

31. *Appointment of new Trustees, vesting of Trust Property, &c.*—(1.) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of the united kingdom for more than twelve months, or desires to be discharged from the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the *personal* representatives of the last surviving or continuing

trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the united kingdom, desiring to be discharged, refusing or being unfit, or being incapable, as aforesaid.

(2.) On an appointment of a new trustee, the number of trustees may be increased.

(3.) On an appointment of a new trustee, it shall not be obligatory to appoint more than one new trustee, where only one trustee was originally appointed, or to fill up the original number of trustees, where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust.

(4.) On an appointment of a new trustee any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(5.) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(6.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator; and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(8.) This section applies to trusts created either before or after the commencement of this act.

32. Retirement of Trustee.]—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to

appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this act, without any new trustee being appointed in his place.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the commencement of this act.

33. Powers of new Trustee appointed by Court.]—(1.) Every trustee appointed by the Court of Chancery, or by the Chancery Division of the court, or by any other court of competent jurisdiction, shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(2.) This section applies to appointments made either before or after the commencement of this act.

34. Vesting of Trust Property in new or continuing Trustees.]—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

(2.) Where a deed by which a retiring trustee is discharged under this act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the *other person*, if any, empowered to appoint trustees, that de-

claration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner prescribed by or under act of parliament.

(4.) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this act.

(5.) This section applies only to deeds executed after the commencement of this act.

35. *Power for Trustees for Sale to sell by Auction, &c.*]—

(1.) Where a trust for sale or a power of sale of property is vested in trustees, they may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title, or other matter, as the trustees think fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss.

(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) This section applies only to a trust or power created by an instrument coming into operation after the commencement of this act.

36. *Trustees' Receipts.*]—(1.) The receipt in writing of any trustees or trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to them or him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing

to the application or being answerable for any loss or misapplication thereof.

(2.) This section applies to trusts created either before or after the commencement of this act.

37. Power for Executors and Trustees to compound, &c.]—

(1.) An executor may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2.) An executor, or two or more trustees acting together, or a sole acting trustee where, by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof, may, if and as he or they think fit, accept any composition, or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3.) As regards trustees, this section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies to executorships and trusts constituted or created either before or after the commencement of this act.

38. Powers to two or more Executors or Trustees.]—(1.)

Where a power or trust is given to or vested in two or more executors or trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2.) This section applies only to executorships and trusts constituted after or created by instruments coming into operation after the commencement of this act.

VIII.—MARRIED WOMEN.

39. *Power for Court to bind Interest of Married Woman.*—

(1.) Notwithstanding that a married woman is restrained from anticipation, the court may, if it thinks fit, where it appears to the court to be for her benefit, by judgment or order, with her consent, bind her interest in any property.

(2.) This section applies only to judgments or orders made after the commencement of this act.

40. *Power of Attorney of Married Woman.*—(1.) A married woman, whether an infant or not, shall by virtue of this act have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of this act relating to instruments creating powers of attorney shall apply thereto.

(2.) This section applies only to deeds executed after the commencement of this act.

IX.—INFANTS.

41. *Sales and Leases on behalf of Infant Owner.*—Where a person in his own right seized of or entitled to land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877.

42. *Management of Land and Receipt and Application of Income during Minority.*—(1.) If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this purpose by the court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply.

(2.) The trustees shall manage or superintend the manage-

ment of the land, with full power to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise, and to erect, pull down, rebuild, and repair houses, and other buildings and erections, and to continue the working of mines, minerals, and quarries which have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies, and to accept surrenders of leases and tenancies, and generally to deal with the land in a proper and due course of management; but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

(3.) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

(4.) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem proper, according to the infant's age, for his or her maintenance, education, or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes.

(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, with power to vary investments; and shall accumulate the income of the investments so made in the way of compound interest, by from time to time similarly investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

- (i.) If the infant attains the age of twenty-one years, then in trust for the infant;

- (ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt after she marries, and though still an infant, shall be a good discharge; but
- (iii.) If the infant dies while an infant, and being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase tenant in tail or tail male or tail female, on the trusts, if any, declared of the accumulated fund by that settlement; but where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives as part of the infant's personal estate;

but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

(6.) Where the infant's estate or interest is in an undivided share of land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8.) This section applies only where that instrument comes into operation after the commencement of this act.

43. *Application by Trustees of Income of Property of Infant for Maintenance, &c.*—(1.) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, and whether absolutely, or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance,

education, or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise; but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies whether that instrument comes into operation before or after the commencement of this act.

X.—RENTCHARGES AND OTHER ANNUAL SUMS.

44. Remedies for Recovery of Annual Sums charged on Land.]

—(1.) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

(2.) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any dis-

treasury found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by nonpayment thereof, may be fully paid.

(3.) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by nonpayment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

(4.) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by nonpayment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(6.) This section applies only where that instrument comes into operation after the commencement of this act.

45. Redemption of Quitrents and other Perpetual Charges.]—

(1.) Where there is a quitrent, chief-rent, rentcharge or other

annual sum issuing out of land (in this section referred to as the rent), the copyhold commissioners shall at any time, on the requisition of the owner of the land, or of any person interested therein, certify the amount of money in consideration whereof the rent may be redeemed.

(2.) Where the person entitled to the rent is absolutely entitled thereto in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of the land, or any person interested therein, may, after serving one month's notice on the person entitled to the rent, pay or tender to that person the amount certified by the commissioners.

(3.) On proof to the commissioners that payment or tender has been so made, they shall certify that the rent is redeemed under this act; and that certificate shall be final and conclusive, and the land shall be thereby absolutely freed and discharged from the rent.

(4.) Every requisition under this section shall be in writing; and every certificate under this section shall be in writing, sealed with the seal of the commissioners.

(5.) This section does not apply to tithe rentcharge, or to a rent reserved on a sale or lease, or to a rent made payable under a grant or licence for building purposes, or to any sum or payment issuing out of land not being perpetual.

(6.) This section applies to rents payable at, or created after, the commencement of this act.

(7.) This section does not extend to Ireland.

XI.—POWERS OF ATTORNEY.

46. *Execution under Power of Attorney.*—(1.) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

(2.) This section applies to powers of attorney created by *instruments* executed either before or after the commencement of this act.

47. *Payment by Attorney under Power without Notice of Death, &c. good.*—(1.) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become lunatic, of unsound mind, or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

(2.) But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(3.) This section applies only to payments and acts made and done after the commencement of this act.

48. *Deposit of Original Instruments creating Powers of Attorney.*—(1.) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the central office of the supreme court of judicature.

(2.) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and an office copy thereof shall be delivered out to him on request.

(3.) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.

(4.) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the central office.

(5.) General rules may be made for purposes of this section, regulating the practice of the central office, and prescribing, with the concurrence of the commissioners of her majesty's treasury, the fees to be taken therein.

(6.) This section applies to instruments creating powers of attorney executed either before or after the commencement of this act.

XII.—CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

49. *Use of word Grant unnecessary.*—(1.) It is hereby declared that the use of the word grant is not necessary in order to convey tenements or hereditaments, corporeal or incorporeal.

(2.) This section applies to conveyances made before or after the commencement of this act.

50. *Conveyance by a Person to himself, &c.*—(1.) Freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

(2.) This section applies only to conveyances made after the commencement of this act.

51. *Words of Limitation in Fee or in Tail.*—(1.) In a deed it shall be sufficient, in the limitation of an estate in fee simple, to use the words in fee simple, without the word heirs; and in the limitation of an estate in tail, to use the words in tail without the words heirs of the body; and in the limitation of an estate in tail male or in tail female, to use the words in tail male, or in tail female, as the case requires, without the words heirs male of the body, or heirs female of the body.

(2.) This section applies only to deeds executed after the commencement of this act.

52. *Powers simply Collateral.*—(1.) A person to whom any power, whether coupled with an interest or not, is given may by deed release, or contract not to exercise the power.

(2.) This section applies to powers created by instruments coming into operation either before or after the commencement of this act.

53. *Construction of Supplemental or Annexed Deed.*—(1.) A deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of indorsement on the previous deed, or contained a full recital thereof.

(2.) This section applies to deeds executed either before or after the commencement of this act.

54. Receipt in Deed sufficient.]—(1.) A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed.

(2.) This section applies only to deeds executed after the commencement of this act.

55. Receipt in Deed or indorsed, Evidence for subsequent Purchaser.]—(1.) A receipt for consideration money or other consideration in the body of a deed or indorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

(2.) This section applies only to deeds executed after the commencement of this act.

56. Receipt in Deed or indorsed, Authority for Payment to Solicitor.]—(1.) Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

(2.) This section applies only in cases where consideration is to be paid or given after the commencement of this act.

57. Sufficiency of Forms in Fourth Schedule.]—Deeds in the form of and using the expressions in the forms given in the fourth schedule to this act, or in the like form or using expressions to the like effect, shall, as regards form and expression in relation to the provisions of this act, be sufficient.

58. Covenants to bind Heirs, &c.]—(1.) A covenant relating to land of inheritance, or devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed.

(2.) A covenant relating to land not of inheritance, or not devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his executors, administrators and assigns, and shall have effect as if executors, administrators and assigns were expressed.

(3.) This section applies only to covenants made after the commencement of this act.

59. *Covenants to extend to Heirs, &c.*—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, though not expressed to bind the heirs, shall operate in law to bind the heirs and real estate, as well as the executors and administrators and personal estate, of the person making the same, as if heirs were expressed.

(2.) This section extends to a covenant implied by virtue of this act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the terms of the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond or obligation made or implied after the commencement of this act.

60. *Effect of Covenant with Two or more jointly.*—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond or obligation devolves.

(2.) This section extends to a covenant implied by virtue of this act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond or obligation, and shall have effect subject to the covenant, contract, bond or obligation, and to the provisions therein contained.

(4.) *This section applies only to a covenant, contract, bond*

or obligation made or implied after the commencement of this act.

61. *Effect of Advance on Joint Account, &c.*]—(1.) Where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly, and not in shares, the mortgage money, or other money, or money's worth for the time being due to those persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage, or obligation, or transfer, and shall have effect subject to the terms of the mortgage, or obligation, or transfer, and to the provisions therein contained.

(3.) This section applies only to a mortgage, or obligation, or transfer made after the commencement of this act.

62. *Grants of Easements, &c. by way of Use.*]—(1.) A conveyance of freehold land to the use that any person may have, for an estate or interest not exceeding in duration the estate conveyed in the land, any easement, right, liberty, or privilege in, or over, or with respect to that land, or any part thereof, shall operate to vest in possession in that person that easement, right, liberty, or privilege, for the estate or interest expressed to be limited to him; and he, and the persons deriving title under him, shall have, use, and enjoy the same accordingly.

(2.) This section applies only to conveyances made after the commencement of this act.

63. *Provision for all the Estate, &c.*]—(1.) Every convey-

ance shall, by virtue of this act, be effectual to pass all the estate, right, title, interest, claim and demand which the conveying parties respectively have, in, to or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.

(2.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(3.) This section applies only to conveyances made after the commencement of this act.

64. *Construction of Implied Covenants.*—In the construction of a covenant or proviso, or other provision, implied in a deed by virtue of this act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

XIII.—LONG TERMS.

65. *Enlargement of Residue of Long Term into Fee Simple.*—(1.) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions, in this section provided.

(2.) Each of the following persons (namely):

- (i.) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term; but, in case of a married woman, with the concurrence of

her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence ;

- (ii.) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not ;
- (iii.) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not :

shall, as far as regards the land to which he is entitled, or in which he is interested, in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.

(3.) Thereupon, by virtue of the deed and of this act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

(4.) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(5.) But where any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land as far as the law permits, and, at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, then the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be conveyed and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

(6.) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right, or in fact, or have not been severed or reserved by an inclosure act or award.

(7.) This section applies to every such term as aforesaid subsisting at or after the commencement of this act.

XIV.—ADOPTION OF ACT.

66. *Protection of Solicitor and Trustees adopting Act.*—(1.) It is hereby declared that the powers given by this act to any person, and the covenants, provisions, stipulations and words which under this act are to be deemed included or implied in any instrument, or are by this act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations and words, to be given by or to be contained in any such instrument, or to be adopted in connection with, or applied to, any such contract or transaction; and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connection with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to insert or apply any others in place thereof, in any case where the provisions of this act would allow of his doing so.

(2.) But nothing in this act shall be taken to imply that the insertion in any such instrument, or the adoption in connexion with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations or words is improper.

(3.) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4.) Where such persons are acting without a solicitor, they shall also be protected in like manner.

XV.—MISCELLANEOUS.

67. Regulations respecting Notice.]—(1.) Any notice required or authorized by this act to be served shall be in writing.

(2.) Any notice required or authorized by this act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3.) Any notice required or authorized by this act to be served shall be sufficiently served if it is left at the last known place of abode or business in the united kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorized to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4.) Any notice required or authorized by this act to be served shall also be sufficiently served if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5.) This section does not apply to notices served in proceedings in the court.

68. Short Title of 5 & 6 Will. 4, c. 62.]—The act described in Part II. of the first schedule to this act shall, by virtue of this act, have the short title of the Statutory Declarations Act, 1835, and may be cited by that short title in any declaration made for any purpose under or by virtue of that act, or in any other document, or in any act of parliament.

XVI.—COURT; PROCEDURE; ORDERS.

69. Regulations respecting Payments into Court and Applications.]—(1.) All matters within the jurisdiction of the court

under this act shall, subject to the acts regulating the court, be assigned to the chancery division of the court.

(2.) Payment of money into court shall effectually exonerate therefrom the person making the payment.

(3.) Every application to the court shall, except where it is otherwise expressed, be by summons at chambers.

(4.) On an application by a purchaser notice shall be served in the first instance on the vendor.

(5.) On an application by a vendor notice shall be served in the first instance on the purchaser.

(6.) On any application notice shall be served on such persons, if any, as the court thinks fit.

(7.) The court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges or expenses of all or any of the parties to any application.

(8.) General rules for purposes of this act shall be deemed rules of court within section seventeen of the Appellate Jurisdiction Act, 1876, and may be made accordingly.

(9.) The powers of the court may, as regards land in the county palatine of Lancaster, be exercised also by the court of chancery of the county palatine; and rules for regulating proceedings in that court shall be from time to time made by the chancellor of the duchy of Lancaster, with the advice and consent of a judge of the high court acting in the chancery division, and of the vice-chancellor of the county palatine.

(10.) General rules and rules of the court of chancery of the county palatine, under this act may be made at any time after the passing of this act, to take effect on or after the commencement of this act.

70. *Orders of Court conclusive.*—(1.) An order of the court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice or service, whether the purchaser has notice of any such want or not.

(2.) This section shall have effect with respect to any lease, sale or other act under the authority of the court, and purporting to be in pursuance of the Settled Estates Act, 1877, notwithstanding the exception in section forty of that act, or to be in pursuance of any former act repealed by that act, notwithstanding any exception in such former act.

(3.) This section applies to all orders made before or after the commencement of this act, except any order which has before the commencement of this act been set aside or determined to be invalid on any ground, and except any order as regards which an action or proceeding is at the commencement of this act pending for having it set aside or determined to be invalid.

XVII.—REPEALS.

71. Repeal of Enactments in Part III. of Second Schedule; Restriction on all Repeals.—(1.) The enactments described in Part III. of the second schedule to this act are hereby repealed.

(2.) The repeal by this act of any enactment shall not affect the validity or invalidity, or any operation, effect or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this act, or any action, proceeding or thing then pending or uncompleted; and every such action, proceeding and thing may be carried on and completed as if there had been no such repeal in this act; but this provision shall not be construed as qualifying the provision of this act relating to section forty of the Settled Estates Act, 1877, or any former act repealed by that act.

XVIII.—IRELAND.

72. Modifications respecting Ireland.—(1.) In the application of this act to Ireland the foregoing provisions shall be modified as in this section provided.

(2.) The court shall be her majesty's high court of justice in Ireland.

(3.) All matters within the jurisdiction of that court shall, subject to the acts regulating that court, be assigned to the chancery division of that court; but general rules under this act may direct that any of those matters be assigned to the land judges of that division.

(4.) The proper office of the supreme court of judicature in Ireland shall be substituted for the central office of the supreme court of judicature.

(5.) General rules for purposes of this act for Ireland shall be deemed rules of court within the Supreme Court of Judi-

cature Act (Ireland), 1877, and may be made accordingly, at any time after the passing of this act, to take effect on or after the commencement of this act.

73. *Death of Bare Trustee Intestate, &c.*—(1.) Section five of the Vendor and Purchaser Act, 1874, is hereby repealed from and after the commencement of this act, as regards cases of death thereafter happening; and section seven of the Vendor and Purchaser Act, 1874, is hereby repealed as from the date at which it came into operation.

(2.) This section extends to Ireland only.

SCHEDULES.

THE FIRST SCHEDULE.

ACTS AFFECTED.

PART I.

- 1 & 2 Vict. c. 110.—An act for abolishing arrest on mesne process in civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England.
- 2 & 3 Vict. c. 11.—An act for the better protection of purchasers against judgments, crown debts, *lis pendens*, and *fiats* in bankruptcy.
- 18 & 19 Vict. c. 15.—An act for the better protection of purchasers against judgments, crown debts, cases of *lis pendens*, and life annuities or rentcharges.
- 22 & 23 Vict. c. 35.—An act to further amend the law of property and to relieve trustees.
- 23 & 24 Vict. c. 38.—An act to further amend the law of property.
- 23 & 24 Vict. c. 115.—An act to simplify and amend the practice as to the entry of satisfaction on crown debts and on judgments.
- 27 & 28 Vict. c. 112.—An act to amend the law relating to future judgments, statutes and recognizances.
- 28 & 29 Vict. c. 104.—The Crown Suits, &c. Act, 1865.
- 31 & 32 Vict. c. 54.—The Judgments Extension Act, 1868.

PART II.

5 & 6 Will. 4, c. 62.—An act to repeal an act of the present session of parliament, intituled “An act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof; and for the more entire suppression of voluntary and extra-judicial oaths and affidavits;” and to make other provisions for the abolition of unnecessary oaths.

THE SECOND SCHEDULE.

REPEALS.

A description or citation of a portion of an act is inclusive of the words, section, or other part, first or last mentioned, or otherwise referred to as forming the beginning, or as forming the end, of the portion comprised in the description or citation.

PART I.

22 & 23 Vict. c. 35 - An act to further amend the
 in part. law of property and to re- } in part; namely,—
 lieve trustees - - - - }
 Sections four to nine.

23 & 24 Vict. c. 126- The Common Law Pro- } in part; namely,—
 in part. cedure Act, 1860 - - - }
 Section two.

PART II.

15 & 16 Vict. c. 86 - An act to amend the practice
 in part. and course of proceeding } in part; namely,—
 in the High Court of Chan- }
 cery - - - - - }
 Section forty-eight.

PART III.

8 & 9 Vict. c. 119 - An act to facilitate the conveyance of real property.

23 & 24 Vict. c. 145- An act to give to trustees,)
 in part. mortgagees, and others cer- } in part; namely,—
 tain powers now commonly }
 inserted in settlements, }
 mortgages, and wills - - }
 Parts II. and III. (sections eleven to thirty).

THE THIRD SCHEDULE.

STATUTORY MORTGAGE.

PART I.

Deed of Statutory Mortgage.

THIS INDENTURE made by way of statutory mortgage the day of 1882 between A. of [&c.] of the one part and M. of [&c.] of the other part WITNESSETH that in consideration of the sum of £ now paid to A. by M. of which sum A. hereby acknowledges the receipt A. as mortgagor and as beneficial owner hereby conveys to M. All that [&c.] To hold to and to the use of M. in fee simple for securing payment on the day of 1883 of the principal sum of £ as the mortgage money with interest thereon at the rate of [four] per centum per annum.

In witness &c.

* * * *Variations in this and subsequent forms to be made, if required, for leasehold land, or other matter.*

PART II.

(A.)

Deed of Statutory Transfer, Mortgagor not joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883 between M. of [&c.] of the one part and T. of [&c.] of the other part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [&c.] WITNESSETH that in consideration of the sum of £ now paid to M. by T. being the aggregate amount of £ mortgage money and £ interest due in respect of the said mortgage of which sum M. hereby acknowledges the receipt M. as mortgagee hereby conveys and transfers to T. the benefit of the said mortgage.

In witness &c.

(B.)

Deed of Statutory Transfer, a Covenantor joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883 between A. of [&c.] of the first part B. of [&c.] of the second part and C. of [&c.] of the third part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [&c.] WITNESSETH that in consideration of the sum of £ now paid to A. by C. being the mortgage money due in respect of the said mortgage no interest being now due and payable thereon of which sum A. hereby acknowledges the receipt A. as mortgagee with the

concurrence of *B.* who joins herein as covenant or hereby conveys and transfers to *C.* the benefit of the said mortgage.

In witness &c.

(C.)

Statutory Transfer and Statutory Mortgage combined.

THIS INDENTURE made by way of statutory transfer of mortgage and statutory mortgage the day of 1883 between *A.* of [&c.] of the 1st part *B.* of [&c.] of the 2nd part and *C.* of [&c.] of the 3rd part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [&c.] WHEREAS the principal sum of £ only remains due in respect of the said mortgage as the mortgage money and no interest is now due and payable thereon AND WHEREAS *B.* is seised in fee simple of the land comprised in the said mortgage subject to that mortgage NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ now paid to *A.* by *C.* of which sum *A.* hereby acknowledges the receipt and *B.* hereby acknowledges the payment and receipt as aforesaid * *A.* as mortgagee hereby conveys and transfers to *C.* the benefit of the said mortgage AND THIS INDENTURE ALSO WITNESSETH that for the same consideration *A.* as mortgagee and according to his estate and by direction of *B.* hereby conveys and *B.* as beneficial owner hereby conveys and confirms to *C.* All that [&c.] To hold to and to the use of *C.* in fee simple for securing payment on the day of 1882 of † the sum of £ as the mortgage money with interest thereon at the rate of [four] per centum per annum.

In witness &c.

[Or, in case of further advance, after aforesaid at * insert and also in consideration of the further sum of £ now paid by *C.* to *B.* of which sum *B.* hereby acknowledges the receipt, and after of at † insert the sums of £ and £ making together]

*. * Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.

PART III.

Deed of Statutory Re-Conveyance of Mortgage.

THIS INDENTURE made by way of statutory re-conveyance of mortgage the day of 1884 between *C.* of [&c.] of the one part and *B.* of [&c.] of the other part supplemental to an indenture made by way of statutory transfer of mortgage dated the day of 1883 and made between [&c.] WITNESSETH that in consideration of all principal money and interest due under that indenture, having been paid of which principal and interest *C.* hereby

94 CONVEYANCING AND LAW OF PROPERTY ACT, 1881.

acknowledges the receipt *C.* as mortgagee hereby conveys to *B.* all the lands and hereditaments now vested in *C.* under the said indenture To hold to and to the use of *B.* in fee simple discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In witness &c.

. *Variations as noted above.*

THE FOURTH SCHEDULE.

SHORT FORMS OF DEEDS.

I.—*Mortgage.*

THIS INDENTURE OF MORTGAGE made the day of 1882 between *A.* of [&c.] of the one part and *B.* of [&c.] and *C.* of [&c.] of the other part WITNESSETH that in consideration of the sum of £ paid to *A.* by *B.* and *C.* out of money belonging to them on a joint account of which sum *A.* hereby acknowledges the receipt *A.* hereby covenants with *B.* and *C.* to pay to them on the day of 1882 the sum of £ with interest thereon in the meantime at the rate of [*four*] per centum per annum and also as long after that day as any principal money remains due under this mortgage to pay to *B.* and *C.* interest thereon at the same rate by equal half-yearly payments on the day of and the day of AND THIS INDENTURE ALSO WITNESSETH that for the same consideration *A.* as beneficial owner hereby conveys to *B.* and *C.* All that [&c.] To hold to and to the use of *B.* and *C.* in fee simple subject to the proviso for redemption following (namely) that if *A.* or any person claiming under him shall on the day of 1882 pay to *B.* and *C.* the sum of £ and interest thereon at the rate aforesaid then *B.* and *C.* or the persons claiming under them will at the request and cost of *A.* or the persons claiming under him re-convey the premises to *A.* or the persons claiming under him And *A.* hereby covenants with *B.* as follows [*here add covenant as to fire insurance or other special covenant required*].

In witness &c.

II.—*Further Charge.*

THIS INDENTURE made the day of 18 between [*the same parties as the foregoing mortgage*] and supplemental to an indenture of mortgage dated the day of 18 and made

between the same parties for securing the sum of £ and interest at [*four*] per centum per annum on property at [*&c.*] WITNESSETH that in consideration of the further sum of £ paid to A. by B. and C. out of money belonging to them on a joint account [*add receipt and covenant as in the foregoing mortgage*] and further that all the property comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to B. and C. of the sum of £ and the interest thereon hereinbefore covenanted to be paid as well as the sum of £ and interest secured by the same indenture.

In witness &c.

III.—Conveyance on Sale.

THIS INDENTURE made the day of 1883 between A. of [*&c.*] of the 1st part B. of [*&c.*] and C. of [*&c.*] of the 2nd part and M. of [*&c.*] of the 3rd part WHEREAS by an indenture dated [*&c.*] and made between [*&c.*] the lands hereinafter mentioned were conveyed by A. to B. and C. in fee simple by way of mortgage for securing £ and interest and by a supplemental indenture dated [*&c.*] and made between the same parties those lands were charged by A. with the payment to B. and C. of the further sum of £ and interest thereon AND WHEREAS a principal sum of £ remains due under the two before-mentioned indentures but all interest thereon has been paid as B. and C. hereby acknowledge NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ paid by the direction of A. to B. and C. and of the sum of £ paid to A. those two sums making together the total sum of £ paid by M. for the purchase of the fee simple of the lands hereinafter mentioned of which sum of £ B. and C. hereby acknowledge the receipt and of which total sum of £ A. hereby acknowledges the payment and receipt in manner before mentioned B. and C. as mortgagees and by the direction of A. as beneficial owner hereby convey and A. as beneficial owner hereby conveys and confirms to M. All that [*&c.*] To hold to and to the use of M. in fee simple discharged from all money secured by and from all claims under the before-mentioned indentures [*Add, if required, And A. hereby acknowledges the right of M. to production of the documents of title mentioned in the Schedule hereto and to delivery of copies thereof and hereby undertakes for the safe custody thereof*].

In witness &c.

[The schedule above referred to.

To contain list of documents retained by A.]

IV.—*Marriage Settlement.*

THIS INDENTURE made the day of 1882 between *John M.* of [&c.] of the 1st part *Jane S.* of [&c.] of the 2nd part and *X.* of [&c.] and *Y.* of [&c.] of the 3rd part WITNESSETH that in consideration of the intended marriage between *John M.* and *Jane S.* *John M.* as settlor hereby conveys to *X.* and *Y.* All that [&c.] To hold to *X.* and *Y.* in fee simple to the use of *John M.* in fee simple until the marriage and after the marriage to the use of *John M.* during his life without impeachment of waste with remainder after his death to the use that *Jane S.* if she survives him may receive during the rest of her life a yearly jointure rent-charge of £ to commence from his death and to be paid by equal half-yearly payments the first thereof to be made at the end of six calendar months from his death if she is then living or if not a proportional part to be paid at her death and subject to the before-mentioned rentcharge to the use of *X.* and *Y.* for a term of five hundred years without impeachment of waste on the trusts hereinafter declared and subject thereto to the use of the first and other sons of *John M.* and *Jane S.* successively according to seniority in tail male with remainder [*insert here, if thought desirable, to the use of the same first and other sons successively according to seniority in tail with remainder*] to the use of all the daughters of *John M.* and *Jane S.* in equal shares as tenants in common in tail with cross remainders between them in tail with remainder to the use of *John M.* in fee simple. [*Insert trusts of term of 500 years for raising portions; also, if required, power to charge jointure and portions on a future marriage; also powers of sale, exchange and partition, and other powers and provisions, if and as desired.*]

In witness &c.

SOLICITORS REMUNERATION ACT.

44 & 45 VICT. c. 44.

An Act for making better Provision respecting the Remuneration of Solicitors in Conveyancing and other Non-Contentious Business.

[22nd August, 1881.]

BE IT ENACTED as follows :

Preliminary.

1. *Short Title; Extent; Interpretation.*—(1.) This act may be cited as the Solicitors Remuneration Act, 1881.

(2.) This act does not extend to Scotland.

(3.) In this act—

“Solicitor” means a solicitor or proctor qualified according to the statutes in that behalf :

“Client” includes any person who, as a principal, or on behalf of another, or as trustee or executor, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ, a solicitor, and any person for the time being liable to pay to a solicitor, for his services, any costs, remuneration, charges, expenses or disbursements :

“Person” includes a body of persons corporate or unincorporate :

“Incorporated Law Society” means, in England, the society referred to under that title in the act passed in the session of the twenty-third and twenty-fourth years of her majesty’s reign, intituled “An Act to amend the Laws relating to Attorneys, Solicitors, Proctors and Certificated Conveyancers;” and, in Ireland, the society referred to under that title in the Attorneys and Solicitors Act, Ireland, 1866 :

“Provincial law societies or associations” means all bodies of solicitors in England incorporated by royal charter, or under the Joint Stock Companies Act, other than the incorporated law society above mentioned.

General Orders.

2. *Power to make General Orders for Remuneration in Conveyancing, &c.*—In England, the lord chancellor, the lord

chief justice of England, the master of the rolls, and the president for the time being of the incorporated law society, and the president of one of the provincial law societies or associations, to be selected and nominated from time to time by the lord chancellor to serve during the tenure of office of such president, or any three of them, the lord chancellor being one, and, in Ireland, the lord chancellor, the lord chief justice of Ireland, the master of the rolls, and the president for the time being of the Incorporated Law Society, or any three of them, the lord chancellor being one, may from time to time make any such general order as to them seems fit for prescribing and regulating the remuneration of solicitors in respect of business connected with sales, purchases, leases, mortgages, settlements and other matters of conveyancing, and in respect of other business not being business in any action, or transacted in any court, or in the chambers of any judge or master, and not being otherwise contentious business, and may revoke or alter any such order.

3. *Communication to Incorporated Law Society.*—One month at least before any such general order shall be made, the lord chancellor shall cause a copy of the regulations and provisions proposed to be embodied therein to be communicated in writing to the Council of the Incorporated Law Society, who shall be at liberty to submit such observations and suggestions in writing as they may think fit to offer thereon; and the lord chancellor, and the other persons hereby authorized to make such order, shall take into consideration any such observations or suggestions which may be submitted to them by the said council within one month from the day on which such communication to the said council shall have been made as aforesaid, and, after duly considering the same, may make such order, either in the form or to the effect originally communicated to the said council, or with such alterations, additions, or amendments, as to them may seem fit.

4. *Principles of Remuneration.*—Any general order under this act may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other

mode, or partly in one mode and partly in another, or others, and may, as regards the amount of the remuneration, regulate the same with reference to all or any of the following, among other, considerations; (namely,)

The position of the party for whom the solicitor is concerned in any business, that is, whether as vendor or as purchaser, lessor or lessee, mortgagor or mortgagee, and the like:

The place, district and circumstances at or in which the business or part thereof is transacted:

The amount of the capital money or of the rent to which the business relates:

The skill, labour and responsibility involved therein on the part of the solicitor:

The number and importance of the documents prepared or perused, without regard to length:

The average or ordinary remuneration obtained by solicitors in like business at the passing of this act.

5. Security for Costs, and Interest on Disbursements.]—Any general order under this act may authorize and regulate the taking by a solicitor from his client of security for future remuneration in accordance with any such order, to be ascertained by taxation or otherwise, and the allowance of interest.

6. Order to be laid before Houses of Parliament; Disallowance on Address.]—(1.) Any general order under this act shall not take effect unless and until it has been laid before each house of parliament and one month thereafter has elapsed.

(2.) If within that month an address is presented to the queen by either house, seeking the disallowance of the order, or part thereof, it shall be lawful for her majesty, by order in council, to disallow the order, or that part, and the order or part disallowed shall not take effect.

7. Effect of Order as to Taxation.]—As long as any general order under this act is in operation, the taxation of bills of costs of solicitors shall be regulated thereby.

Agreements.

8. Power for Solicitor and Client to agree on Form and Amount of Remuneration.]—(1.) With respect to any business to which the foregoing provisions of this act relate, whether

any general order under this act is in operation or not, it shall be competent for a solicitor to make an agreement with his client, and for a client to make an agreement with his solicitor, before or after or in the course of the transaction of any such business, for the remuneration of the solicitor, to such amount and in such manner as the solicitor and the client think fit, either by a gross sum, or by commission or percentage, or by salary, or otherwise; and it shall be competent for the solicitor to accept from the client, and for the client to give to the solicitor, remuneration accordingly.

(2.) The agreement shall be in writing, signed by the person to be bound thereby or by his agent in that behalf.

(3.) The agreement may, if the solicitor and the client think fit, be made on the terms that the amount of the remuneration therein stipulated for either shall include or shall not include all or any disbursements made by the solicitor in respect of searches, plans, travelling, stamps, fees, or other matters.

(4.) The agreement may be sued and recovered on or impeached and set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a solicitor; and if, under any order for taxation of costs, such agreement being relied upon by the solicitor shall be objected to by the client as unfair or unreasonable, the taxing master or officer of the court may inquire into the facts, and certify the same to the court; and if, upon such certificate it shall appear to the court or judge that just cause has been shown either for cancelling the agreement or for reducing the amount payable under the same, the court or judge shall have power to order such cancellation or reduction, and to give all such directions necessary or proper for the purpose of carrying such order into effect, or otherwise consequential thereon, as to the court or judge may seem fit.

9. *Restriction on Solicitors Act, 1870.*—The Attorneys and Solicitors Act, 1870, shall not apply to any business to which this act relates.

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